No. 97-1396-ATX Title: Vicky M. Lopez, et al., Appellants
v.
Monterey County, et al.

Docketed: February 25, 1998 Court: United States District Court for the Northern District of California

Entry	Date	Proceedings and Orders
	Jan 5 1998	Application (A97-490) for a stay of the order dismissing the action pending appeal, submitted to Justice O'Connor.
	Jan 6 1998	Response to application (A97-490) from State of California requested by Justice O'Connor, due January 13, 1998.
	Jan 13 1998	Response to application (A97-490) filed by California.
	Jan 13 1998	(A97-490) Memorandum for the United States as amicus curiae supporting applicants filed.
	Jan 14 1998	Response to application (A97-490) filed by appellee Monterey County.
	Jan 14 1998	(A97-490) Letter reply filed by appellants.
	Jan 15 1998	(A97-490) Letter on behalf of intervener Judge Wendy Clark Duffy received.
	Jan 21 1998	Application (A97-490) referred to the Court by Justice O'Connor.
	Jan 23 1998	(A97-490) The application for stay of the order of the United States District Court for the Northern District of California, case No. C-91-20559, dated December 22, 1997, dismissing the action presented to Justice O'Connor and by her referred to the Court is granted pending the timely docketing of an appeal of this Court. Should the jurisdictional statement be timely filed, this order shall remain in effect pending this Court's action on the appeal. If the appeal is dismissed, or the judgment affirmed, this order shall terminate automatically. In the event jurisdiction is noted or postponed, this order will remain in effect pending the sending down of the judgment of this Court.
	Feb 24 1998	Statement as to jurisdiction filed. (Response due March 27, 1998)
	Feb 24 1998	Appendix of appellant filed.
	Mar 16 1998	Waiver of right of appellee Wendy Duffy to respond filed.
	Mar 19 1998	Brief amicus curiae of United States filed.
	Mar 27 1998	Motion of appellee California to affirm filed.
	Apr 7 1998	Reply brief of appellants Vicky Lopez, et al. filed.
	Apr 8 1998	DISTRIBUTED. April 24, 1998
	Apr 27 1998	PROBABLE JURISDICTION NOTED. SET FOR ARGUMENT November 2, 1998. **********
	Jun 11 1998	Brief amicus curiae of United States filed.
	Jun 11 1998	Joint appendix filed.
	Jun 11 1998	Brief of appellants Vicky Lopez, et al. filed.
	Jun 17 1998	Order extending time to file brief of appellee on the merits until July 31, 1998.
	Jun 22 1998	Motion of Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument

No. 97-1396-ATX

Entry	Date	Proceedings and Orders
		filed.
	Jun 26 1998	Motion of Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
	Jul 16 1998	Motion of Pacific Legal Foundation for leave to file a brief as amicus curiae filed.
	Jul 29 1998	Brief of appellee Monterey County, California filed.
	Jul 31 1998	Brief of appellee California filed.
	Sep 2 1998	Reply brief of appellants Vicky Lopez, et al. filed.
	Sep 9 1998	Motion of Pacific Legal Foundation for leave to file a brief as amicus curiae GRANTED.
	Sep 25 1998	CIRCULATED.
	Oct 20 1998	Original record from USDC received. (2 boxes)
	Nov 2 1998	ARGUED.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants*,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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QUESTION PRESENTED

WHETHER A SECTION 5-COVERED JURISDICTION MAY IMPLEMENT VOTING CHANGES WITHOUT PRECLEARANCE–WHEN THE CHANGES WERE INITIALLY CREATED BY COUNTY ORDINANCES THAT THIS COURT ALREADY HAS DETERMINED TO BE SUBJECT TO SECTION 5–SIMPLY BECAUSE THE STATE, AN UNCOVERED JURISDICTION, SUBSEQUENTLY ENACTS LEGISLATION THAT INCORPORATES THE COUNTY'S PRIOR CHANGES.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Jurisdictional Statement

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1253, 1291, and 42 U.S.C. § 1973c to review the Order Granting (1) Motion to Dismiss First Amended Complaint; and (2) Motion to Vacate Order Extending Judicial Terms filed by the United States District Court for the Northern District of California on December 19, 1997, and to review the Judgment of Dismissal entered by the District Court on December 22, 1997. The notice of appeal was filed on December 24, 1997, within the thirty-day time period specified by 28 U.S.C. § 2101(b).

Appellants' Jurisdictional Statement Appendix 13 (hereinafter cited as J.S. App., filed herewith under separate cover).

Opinion Below

The Order Granting (1) Motion to Dismiss First Amended Complaint; and (2) Motion to Vacate Order Extending Judicial Terms filed on December 19, 1997 is not yet reported and is reprinted in full in the Appendix. J.S. App. 1. The Judgment of Dismissal entered by the District Court on December 22, 1997, is also not reported and is reprinted in full in the Appendix. J.S. App. 11.

Relevant Statutes and Regulations

42 U.S.C. § 1973c. The statute is reproduced in the Appendix (J.S. App. 16).

Statement of the Case

Monterey County, California ("County") is subject to the § 5 preclearance provisions of the Voting Rights Act. Accordingly, the County must secure an administrative ruling from the United States Attorney General or a declaratory judgment from the District Court for the District of Columbia that a covered voting change enacted after November 1, 1968, does not have the purpose or the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 42 U.S.C. § 1973c; *Lopez v. Monterey County,* 117 S.Ct. 340, 343 (1996).

Despite this statutory mandate, the lower court ruled that a change in the County's voting practice—dependent upon ordinances already held by this Court to be subject to § 5—is exempt from preclearance requirements. Its holding relied upon the premise that subsequently-enacted state statutes, which incorporated the County's ordinances, did not have to be precleared and obviated the need for preclearance of the ordinances. The lower court reasoned that because the State

is not a § 5-covered jurisdiction, the County's voting change is now immunized from § 5 strictures.

The ruling is inconsistent with this Court's § 5 precedents and would undo decades of § 5 administrative practice involving partially covered states. If § 5 is to maintain its intended deterrent effect, it cannot be rendered meaningless simply because a county's otherwise covered voting change is incorporated into a statute enacted by an uncovered state.

Historical Background

The County had two municipal court and seven justice court districts on November 1, 1968. The courts were trial courts with limited jurisdiction.[1] The judges within each of the judicial districts were elected within the respective judicial district. Between November 1, 1968, and 1983, the County adopted a series of ordinances which ultimately consolidated the judicial districts into a single county-wide municipal court district.[2] *Lopez,* 117 S.Ct. at 344. County-wide judicial elections were conducted in 1986, 1988, and 1990. Presently, there are ten judgeships on the municipal court. In addition to the County's judicial district consolidation ordinances, this Court noted that the State of California had enacted laws which "have reflected changes in the County's judicial districts resulting from the consolidation process."[3] *Lopez,* 117 S.Ct. at 343-344. For

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[1] Justice court districts were eliminated as a result of a constitutional amendment adopted by the California electorate in 1995. J.S. App. 8, Order at 5.

[2] The First Amended Complaint provides a detailed chronology of the judicial district consolidation ordinances enacted by Monterey County. J.S. App. 83.

[3] This Court listed these statutes in its prior opinion. One of the statutes listed was 1979 Cal. Stats. ch. 694, § 2, which was the statute utilized by the District Court to dismiss

example, 1979 Cal. Stats., ch. 694, § 2, consolidated the North Monterey County Judicial District into a single municipal court district. J.S. App. 32. The North Monterey County Judicial District was listed as a municipal court district in 1977 Cal. Stats. ch. 995, § 1. J.S. App. 30. However, the two statutes did not define the North Monterey County Judicial District. Such a district was defined by Monterey County Ordinance No. 2195, adopted by the Monterey County Board of Supervisors on August 10, 1976. J.S. App. 65.

None of the judicial district consolidation ordinances was submitted by the County for § 5 approval. In 1983, the State submitted for § 5 preclearance a statute which mentioned one such ordinance, providing for "Monterey County's prospective consolidation of the last two justice court districts with the remaining municipal court district." 1983 Cal. Stats. ch. 1249. *Lopez*, 117 S.Ct. at 344. This County ordinance was Ordinance No. 2930, which the State submitted for § 5 approval. The District Court held that Ordinance No. 2930 had received the requisite § 5 approval. J.S. App. 7, Order at 6. Although Ordinance No. 2930 may have been precleared, this Court observed that none of the prior judicial district consolidation ordinances has ever been submitted for § 5 approval. Thus, "[u]nder our precedent, these previous consolidation ordinances do not appear to have received federal preclearance approval." *Lopez*, 117 S.Ct. at 345.

Prior Proceedings

Appellants, who are Latino voters of Monterey County, filed this action on September 6, 1991. The case seeks injunctive relief against the implementation of the voting changes reflected in the County's judicial district consolidation ordinances because the ordinances have not received the requisite § 5 approval. The three-judge court initially held that

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the present § 5 enforcement action. *Lopez*, 117 S.Ct. at 344, footnote "*".

the County's ordinances were subject to § 5 preclearance requirements but had not received § 5 approval. Subsequently, the County sought judicial preclearance from the District Court for the District of Columbia. *Monterey County v. United States*, Civ. Act. No. 93-1639 (D.D.C. filed August 10, 1993). The action was voluntarily dismissed after the County acknowledged that it was not able to demonstrate, as required by § 5, that several of the ordinances did not have a retrogressive effect on Latino voting strength. *Lopez*, 117 S.Ct. at 345.

Thereafter, Appellants and the County submitted to the District Court for the Northern District of California proposed election plans for the court's approval. These election plans were opposed by the State and other intervenors on the basis that the plans violated certain constitutional provisions. The District Court enjoined the 1994 judicial elections and requested all the parties "to develop a workable solution." *Lopez*, 117 S.Ct. at 346. The parties were unable to resolve their differences. Subsequently, in a December 20, 1994 Order, the District Court ordered the County to implement a previously submitted division election plan in a special judicial election to be held on June 6, 1995. Under the division plan, there continued to be a single county-wide municipal court. However, judges would be elected from four divisions or election districts. The County's election district plan received § 5 approval from the Attorney General on March 6, 1995. *Lopez*, 117 S.Ct. at 346. Seven judges, with terms expiring in January 1997, were elected in the June 6, 1995 elections.

On November 1, 1995, the District Court changed course and, deciding that the interim election plan's constitutionality was in doubt, issued an Order reverting to a county-wide election to be held on March 26, 1996. As summarized by this Court, "[t]hus, in essence, four years after the filing of the complaint in this case, the District Court ordered the County to hold elections under the very same scheme that appellants originally challenged under § 5 as unprecleared." *Lopez*, 117 S.Ct. at 346. On February 1, 1996, this Court granted a stay of

the November 1, 1995, order and noted probable jurisdiction on April 1, 1996. *Ibid.*

This Court held that the District Court committed legal error by implementing an election plan which reflected the County's policy choice of conducting county-wide judicial elections, when the county-wide election plan had not received the required § 5 preclearance. This Court expressly directed the County to comply with the preclearance requirements: "The requirement of federal scrutiny should be satisfied without further delay." 117 S.Ct. at 349.

On remand, the State filed a motion to dismiss Appellants' First Amended Complaint and a motion to vacate the order extending judicial terms.[4] The State's motion to dismiss was based on several grounds which were expressly reserved by this Court for consideration on remand.[5] On December 19, 1997, the District Court dismissed the First Amended Complaint and denied a stay of its Order. J.S. App. 1, Order at 8. The

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[4] Following this Court's February 1996 stay order, the District Court extended the judicial terms of those judges whose terms would have expired in January 1997. J.S. App. 2, Order at 1.

[5] The District Court summarized these grounds into four categories: 1) intervening changes in state laws have superseded the county ordinances and thus the county-wide judicial election system had been converted into an election system mandated by state law rather than by county ordinances; 2) "the complaint is barred by laches"; 3) the Voting Rights Act was unconstitutionally applied when Monterey County was designated a jurisdiction subject to the § 5 preclearance provisions; and, 4) the county ordinances did not constitute voting changes subject to § 5 approval. The District Court did not address categories 2 through 4, finding that the first ground was dispositive in the dismissal of the Appellants' First Amended Complaint. J.S. App. 1, Order at 3.

judgment of dismissal was entered on December 22, 1997. J.S. App. 11. Notice of Appeal of the District Court's Order was filed on December 24, 1997. J.S. App. 13. On January 23, 1998, this court granted a stay of the December 22, 1997, Order dismissing this action.

District Court's Order

The dismissal of the First Amended Complaint was premised upon the District Court's finding that 1979 Cal. Stats. chap. 694, previously codified in Cal. Gov. Code § 73560, consolidated three municipal courts into a single municipal court district for Monterey County.[6] The District Court held that the establishment of this single municipal court district was not subject to § 5 review because the State of California is not a designated jurisdiction subject to the § 5 preclearance requirements. According to the District Court's interpretation of § 5, the opening clause refers only to those political jurisdictions which have been specifically designated pursuant to § 4(b) of the Voting Rights Act: "[t]he plain language of the clause does not apply to an uncovered state which 'enact(s) or seek(s) to administer' a voting plan in a subordinate, covered county." J.S. App. 5, Order at 4. Since the State of California was not designated pursuant to § 4(b), the District Court reasoned, state statutes mandating the implementation of voting changes in a § 5-covered county are not subject to § 5.

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[6] The 1979 statute amended Cal. Gov. Code 73560 as follows: "There is in the county of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District. This article applies to the municipal court established within the judicial district which shall be known as the Monterey County Municipal Court." J.S. App. 32.

I. Argument — The Question Presented Is Substantial

The principal issue before this Court is whether an admitted change in voting practice in a § 5-covered county is exempt from preclearance requirements simply because the legislative source for the change is a state statute. If, as Appellants submit, the County's administration and implementation of the state statutes are subject to § 5 preclearance requirements, this Court need not reach the subsidiary question of whether the County is additionally required to obtain preclearance of the antecedent County ordinances.

In accepting the State's argument that its legislation protects Monterey County from § 5's reach, the District Court carves out an unwarranted exception to § 5 preclearance requirements. In its opinion in the initial appeal of this case, this Court did not reach the question of whether state statutes have the prophylactic effect urged by the State, but it did determine a key issue on this appeal, *i.e.*, that the County ordinances enacted prior to 1983 did not receive the federal preclearance approval required by this Court's precedent. *Lopez*, 117 S.Ct. at 345. In reversing the lower court's order authorizing an election plan that had not been precleared pursuant to § 5 of the Voting Rights Act, this Court concluded its opinion by admonishing the County to satisfy its obligation to submit its voting changes to federal scrutiny "without further delay." *Id.* at 349. On remand, the lower court erroneously assumed that the subsequently enacted state statute incorporating the changes initially created by the County ordinances cured the illegal effect of the County's failure to fulfill its preclearance obligations. The lower court's ruling, permitting covered jurisdictions to evade § 5's preclearance requirements by seeking enactment of state statutes reflecting the unprecleared changes, raises a substantial question regarding effective enforcement of the Voting Rights Act, and should be summarily reversed.

A. The District Court Erred In Concluding that § 5 Does Not Apply To a State Statute that Effects a Voting Change in a § 5-Covered County

Relevant precedent, the plain reading of § 5, the legislative history accompanying the 1982 Voting Rights Act extension, and the administrative practices of the United States Attorney General all demonstrate that the District Court's order to dismiss the First Amended Complaint was erroneous.

1. Applicable Precedent Requires Preclearance for State Statutes Effecting Voting Changes in § 5-Covered Political Subdivisions.

The lower court's construction of § 5 is flatly inconsistent with prior decisions of this Court. Under the lower court's reasoning, for example, *Perkins v. Matthews*, 400 U.S. 379 (1971), would have been decided differently. In *Perkins*, the county's change to at-large elections was mandated by state law and therefore, the county argued, "it had no choice but to comply with the [state] statute." *Id.* at 394. This Court rejected that argument: "We have concluded, nevertheless, that the change to at-large elections required federal scrutiny under § 5." *Ibid.*

This rationale was reiterated in the more recent case *Foreman v. Dallas County*, 117 S.Ct. 2357 (1997). In *Foreman*, Dallas County argued that its change in voting practice was not subject to § 5 because it was acting pursuant to a state statute which already had been precleared. This Court held that, in determining whether § 5 applies, "[t]he question is simply whether the County, by its actions, *whether taken pursuant to a statute or not*, 'enacted or [sought] to administer any . . . standard, practice, or procedure with respect to voting different from' the one in place on November 1, 1972." *Id.* at 2358 (citing 42 U.S.C. § 1973c) (emphasis added).

Although *Foreman*, like *Perkins*, involved an entire state which was the covered jurisdiction, this Court's analysis is controlling as to the crucial question here—whether a local jurisdiction "seeks to administer" a voting practice when its actions are taken pursuant to a state statute. *Foreman* answers this question in the affirmative and thereby fatally undermines the State's attempt to circumvent § 5. A county is "seeking to administer" a voting practice even when simply implementing a state statute. Thus, Monterey County's adoption of a county-wide election system is subject to preclearance whether now conducted pursuant to county ordinance or state law.

The lower court ignored this precedent and instead, relying on *Young v. Fordice*, 117 S.Ct. 1228 (1997), held that a voting change is exempt from § 5 unless it involves "some exercise of policy choice and discretion by the covered jurisdiction." J.S. App. 9, Order at 7. But *Young*'s analysis, arising in the context of whether a state could maintain a dual registration system, cannot be read so broadly. *Young* involved federal legislation —the National Voter Registration Act—that directly regulated states' voting practices, an area in which Congress' constitutional power to mandate such voting changes by the state is unquestioned. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932); *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995), *cert. denied*, 516 U.S. 1093 (1996). *See also State of South Carolina v. Katzenbach*, 383 U.S. 326, 324-327 (1966). In enacting § 5, Congress was concerned about the potential discriminatory effects of voting changes by "a State or political subdivision," not changes mandated by Congress itself. The distinct factual context in *Young*, therefore, is inapplicable to the facts presented here. The lower court's reliance on *Young* to create a gaping hole in § 5 coverage—exempting voting changes by covered counties so long as those changes are subsequently incorporated into state legislation—is wholly inconsistent with this Court's teachings as reaffirmed last term in *Foreman*, decided after *Young*.

The District Court thus erred by focusing on the wrong question. The critical question is not the legislative source of the voting change but simply whether a § 5-covered jurisdiction is implementing a voting change without first obtaining preclearance. Earlier decisions of this Court support this analysis.

United Jewish Organizations v. Carey, 430 U.S. 144 (1977), for example, involved a state reapportionment statute that affected voting changes in the three counties in the State of New York which were covered by § 5. In beginning its § 5 analysis, the Court stated, "Given this [§ 5] coverage of the counties involved ...." *Id.* at 157. Similarly, this Court in *Shaw v. Hunt*, 517 U.S. 899, ___, 116 S.Ct. 1894, 1903-1904 (1996), did not question the propriety of the Attorney General's § 5 review of North Carolina's redistricting plan as it affected the covered counties in that state. Although the jurisdictional issue was not addressed directly, "a review of the sources of the Court's jurisdiction is a threshold inquiry appropriate to the disposition of every case that comes before us." *Brown Shoe Co. v. United States*, 370 U.S. 294, 305-306 (1962).

The State discounts these decisions by asserting that the states "voluntarily" submitted their redistricting plans to the Attorney General. The focus on whether the submission is voluntary is misplaced for one important reason. The Attorney General and federal courts do not have any jurisdiction to review voting changes which are not subject to the § 5 preclearance provisions. *See Brown Shoe*, *supra*; *see also* 28 C.F.R. § 51.35 "Disposition of inappropriate submissions" ("The Attorney General will make no response on the merits with respect to an inappropriate submission... [which includes] submissions by jurisdictions not subject to the preclearance requirement ....").

This Court has consistently employed a territorial definition of § 5's coverage which focuses upon the location where the voting change is implemented, not the legislative source of the change. In *U.S. v. Board of Commissioners of Sheffield*,

Alabama, 435 U.S. 110, 113 (1978), this Court employed unmistakably plain language in stating that § 5 requires covered jurisdictions to "obtain prior federal approval before changing any voting practice or procedure ...." The *Sheffield* Court held that § 5 "applies to *all entities having power* over any aspect of the electoral process *within designated jurisdictions* ....." *Id.* at 118 (emphasis added). This holding exposes the fatal flaw in the lower court's analysis—the legislative source of the change in voting practice is irrelevant. Whether the county-wide system is the product of unprecleared county ordinances or superseding state statutes, the critical factor is that all entities that "enact or seek to administer" voting practice changes within a covered jurisdiction must ensure that those changes are precleared. Thus, even if the lower court was correct in concluding that superseding changes in state law converted the County's election scheme into a state plan, that conclusion in no way affects the unequivocal § 5 mandate of preclearance for "any" voting change in the covered jurisdiction.[7]

2. Plain Reading of the Statute Requires the § 5 Preclearance of State Statutes Which Affect Covered Jurisdictions

The plain language of § 5 must be reviewed to determine whether Monterey County may implement unprecleared voting changes pursuant to an unprecleared state statute. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992). And the plain language reveals why this Court's prior rulings have not

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[7] The legislative source of the voting change may be relevant to discriminatory purpose in the context of a § 5 retrogression analysis, *Reno v. Bossier Parish School Board*, 117 S.Ct. 1491, 1503 (1997) but that question is not before this Court. *See Lopez*, 117 S.Ct. at 348-349 (in action alleging failure to preclear, court lacks authority to consider discriminatory purpose).

questioned the requirement of preclearance of state statutes that affect covered jurisdictions within the legislating state.

A § 5-covered jurisdiction, such as Monterey County, which "enacts or seek[s] to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968" must first secure approval from either the United States Attorney General or the United States District Court for the District of Columbia before such a voting change can be implemented. 42 U.S.C. § 1973c.

The District Court reasoned that the "plain language of the clause does not apply to an uncovered state which 'enact(s) or seek(s) to administer' a voting plan in a subordinate covered county." J.S. App. 5, Order at 4. The District Court's focus on the legislative source of the voting change renders meaningless any distinction between "enacts" and "seeks to administer." Yet this is contrary to the ordinary meaning of these terms, *see Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, ___, 115 S.Ct. 788, 793 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning."), and is contrary to this Court's "reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment." *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 562 (1990) (*citing Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 837 (1988)). "Enact" is defined as "to make into law," whereas "administer" means "to manage or direct." Webster's New World Dictionary (3rd College ed. 1988). Thus, voting changes, as set forth in § 5, are not limited to those changes which are initiated by the covered jurisdiction but also include those that are managed or directed by it.[8]

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[8] A contrary interpretation would invite circumvention of § 5 by encouraging covered political subdivisions to forego the enactment and adoption of any voting changes and, instead, attempting to have the state adopt all changes affecting voting.

This distinction between "enact" and "administer" is also supported by California law which provides that, when elections are to be conducted at the local level, the local jurisdiction shall "administer" the election. In California Government Code §74784, for example, the state "enacted" a statute that directs a county official to "administer that election." Identical language is employed in numerous other state statutes. *See, e.g.,* Cal. Gov. Code §§ 26625, 26666, 26668, 72110, 72114, 73665.6(a), and 74820.1(b).

If Congress had wished to limit the scope of § 5 to changes initiated by the covered jurisdiction, it would not have used the term "administer" in addition to "enacts." By employing the language it did, Congress made clear that § 5 encompasses voting changes administered by the covered jurisdiction, not simply those it enacts.

The District Court further reasoned that "'seeks to administer'... must involve some exercise of policy choice and discretion by the covered jurisdiction" and that h e "[t]he County, as a subordinate jurisdiction of the State, lacks the discretion to choose a voting plan that does not involve a county-wide district." J.S. App. 9, Order at 7. Neither the plain language of § 5 nor this Court's construction of it even hint at the notion that "seeks to administer" only applies to a local jurisdiction when it is exercising discretion in its administration or implementation of an unprecleared state statute.

Indeed, in defining the reach of § 5, Congress recognized that mandatory state legislation, even emanating from an uncovered state, could have a discriminatory effect on the political participation of minority voters in a particular County. Thus, Monterey County became subject to the § 5 preclearance

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Such an interpretation would undermine the very purpose of § 5.

requirements pursuant to a coverage formula that relied upon the presence of a state-wide literacy test mandated by the California Constitution, even though the state of California itself was not covered. Cal. Const. Art. II, sec.1, (repealed 1972); 42 U.S.C. §1973 b(b); 28 CFR Part 51 (Appendix), 35 Fed. Reg. 12354 (1970); 36 Fed. Reg. 5809 (1971). Congress deemed irrelevant the fact that the state was the source of the literacy test which triggered the County's coverage, and that Monterey County had no choice but to enforce the state law. It would be incongruous to interpret § 5 coverage in a manner that would exclude from scrutiny all mandatory state laws, when it was mandatory state law that prompted Congress to subject Monterey County to § 5 scrutiny in the first place.

But even assuming *arguendo* that the District Court is correct in construing "seeks to administer" as requiring some exercise of discretion by the covered jurisdiction beyond what is involved in the implementation of an election scheme, Monterey County clearly made such a policy choice. State law did not require the County to adopt the changes in voting practice at issue herein. Indeed, during oral argument before this Court, the State conceded that Monterey County was free to adopt the consolidation ordinances and that these consolidations were not mandated by State law.[9]

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[9] Question: ... Was the—Monterey County free to adopt the plans that it did—at the time that it took the actions that it did?

Mr. Stone: Yes, It's various consolidation ordinances—

Question: It wasn't mandated by State law?

Mr. Stone: No. State law permitted the counties to adopt—

Question: But it didn't require it?

Mr. Stone: No, although there is some confusion on the record in that respect. Official Transcript of Proceedings Before the Supreme Court of the United States, *Lopez v. Monterey County*, October 8, 1996 at 35:18-36:5.

Most significantly, the 1979 statute was preceded by a County ordinance,[10] obviously reflecting the County's policy choice, which consolidated the same judicial districts specified in the state statute. Thus, the lower court cannot shield this voting change from § 5 scrutiny based upon the requirement "that it must involve some exercise of policy choice and discretion" for the simple reason that this unprecleared scheme, whether currently the product of a state statute or County ordinances, *does* reflect the policy choices of Monterey County. *Lopez*, 117 S.Ct. at 348 ("at-large county-wide system undoubtedly 'reflect[ed] the policy choices' of the County"). [11]

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[10] Prior to the enactment of the state statute, the Monterey County Board of Supervisors adopted on June 5, 1979, Monterey County Ordinance No. 2524, which consolidated the then three municipal court districts into one district named the Monterey County Municipal Court District. J.S. App. 94, First Amended Complaint at ¶ 40.

[11] The District Court's construction of § 5 is also flawed by failing to accord plain meaning to the term "*any* voting qualification." "Any" must be understood in the plural sense as all encompassing. 3A C.J.S. Any at 903 ("In this, its ordinary sense, it is a word which is broad and general, and comprehensive, and is broadly inclusive, and all embracing.")(footnotes omitted). Thus, "any" voting changes are not limited to those changes which are initiated by a covered jurisdiction but instead, must include all voting changes irrespective of their legislative origin. This interpretation mirrors the § 5 regulations. *See* 28 C.F.R. § 51.2 (definition of "Change affecting voting" refers to any voting change) and 28 C.F.R. § 51.12 (Section 5 applies to any voting changes).

3. The Legislative History of the 1982 Amendments to the Voting Rights Act Supports the Submission of State Statutes Which Affect Covered Political Subdivisions

The legislative history of the 1982 amendments to the Voting Rights Act provides further support for requiring the submission of California's statutes which affect § 5-covered counties.[12] During the legislative hearings before the Senate Subcommittee on the Constitution considering the 1982 amendments, the following colloquy occurred between Senator Orrin Hatch and Steve Suitts, then Executive Director of the Southern Regional Council:

> Senator Hatch. Thank you so much, Mr. Suitts.
> You complain about several enactments passed by the North Carolina Legislature which were not submitted under section 5. Is there any decision of the Supreme Court which holds that the legislature of a State which is only partially covered must submit its enactments to the Justice Department?
>
> Mr. Suitts. I do not know that there is a case precisely on that point, although I do not know that there has been any serious argument that that is not a requirement. It is pretty obvious that all those items [state

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[12] Because the State's restrictive interpretation of the § 5 preclearance provisions is contrary to the plain language of the statute, this Court's inquiry should end there without need to resort to a statute's legislative history. *Connecticut Nat. Bank v. Germain*, 503 U.S. at 253-54. In any event, resort to legislative history supports Appellants' plain language reading of the statute.

> statutes] which we identified do affect the 40 counties. There is a holding in the Federal court in North Carolina that a statewide law which affects one of the 40 counties must be submitted.

Hearings Before the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate on S. 53, S. 1761, S. 1975, S. 1992, and H.R. 3112 (Voting Rights Act), 97th Congress, 2nd Sess., Vol. 1 (1983) at p. 599. In response to this colloquy, the Senate Report,[13] accompanying the passage of the 1982 amendments specifically stated: "While North Carolina, as a State, is not subject to section 5, the legislation in question affected North Carolina counties which are covered and, therefore, it should have been precleared." Senate Report No. 97-417, 97th Congress 2d Sess. (May 25, 1982) at 12, n. 32 [hereinafter cited as Senate Report]. This clear directive was ratified by Congress when the 1982 amendments to the Voting Rights Act were enacted. *See United States v. Bd. of Comm'rs of Sheffield*, 435 U.S. at 134 - 135 (1978) (Court concluded that Congress ratified § 5 statutory interpretation as indicated by administrative practices of the Attorney General and legislative history showing that Congress agreed with that interpretation).

In view of this legislative history and the subsequent congressional ratification, there can be no serious dispute that the Voting Rights Act requires preclearance of state statutes which affect voting changes in § 5-covered counties.

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[13] Legislative committee reports are the best source for determining legislative intent. *Thornburg v. Gingles*, 478 U.S. 30, 43, n. 7 (1986)("We have repeatedly recognized that the authoritative source for legislative intent lies in the Committee Reports on the bill.")(relying upon Senate Report 97-417 for determining legislative intent of § 2 of the Voting Rights Act).

4. The District Court's Holding Conflicts with the Attorney General's Longstanding Construction of § 5 and the Attorney General's Consistent Practice of Requiring § 5 Submissions of State Enactments Affecting Covered Jurisdictions

Pursuant to applicable regulations, the United States Attorney General evaluates statutes from states not subject to the § 5 preclearance provisions, when those statutes affect voting changes in political jurisdictions within the state that are subject to § 5. *See* 28 C.F.R. § 51.23 ("When one or more counties or other political subunits within a State will be affected, the State may make a submission on their behalf."). For example, the Attorney General has evaluated North Carolina's legislative redistricting plan as it affected § 5-covered counties. *See* Senate Report at 11 (Letter of Objection of Asst. Attorney General, December 7, 1981).[14] Moreover, in the recent congressional redistricting in North Carolina, the plan was submitted to and evaluated by the Attorney General prior

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[14] Although the State of North Carolina is not subject to § 5 preclearance, *see* 28 C.F.R. Part 51 (Appendix), the Attorney General has evaluated other North Carolina state statutes affecting § 5-covered counties within the state. Extension of the Voting Rights Act of 1965, Hearings Before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 94th Congr., 1st Sess. Testimony of Hon. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, at 535, Exhibit 5 at 600 (April 8, 9, 10, 22, 29, 30, May 1, 1975), Letters of Objection, dated July 30, 1971 & September 27, 1971. There was also a letter of objection against the congressional, assembly, and senate redistrictings for the State of New York, although the state itself is not a § 5-covered jurisdiction. Letter of Objection, dated April 1, 1974. *Id.*, at p. 599 & 667.

to the constitutional challenge filed by Anglo voters. *Shaw v. Hunt*, 116 S.Ct. at 1899. *See also Johnson v. DeGrandy*, 512 U.S. 997, 1001 n. 2 (1994) (Florida congressional redistricting plan submitted for § 5 preclearance because five counties are subject to § 5). Given this consistent administrative practice, the District Court failed to accord proper deference to the Attorney General's interpretation of § 5 and the Attorney General's § 5 practices which repeatedly have required the submission of state statutes which affect voting changes in covered counties even if the state is not subject to § 5.[15] *See, e.g.*, 28 C.F.R. § 51.12 ("Any change affecting voting [is subject to preclearance requirement even if it] is designed to remove the elements that caused objection by the Attorney General to a prior submitted change ....").

Moreover, if there is any ambiguity in applying the § 5 preclearance provisions, such ambiguity must be resolved against the submitting jurisdiction. *N.A.A.C.P. v. Hampton County Election Com'n*, 470 U.S. 166, 178-179 (1985)("Any doubt that these changes are covered by § 5 is resolved by the construction placed upon the Act by the Attorney General, which is entitled to considerable deference." (footnote omitted)). In the present case, if there is any ambiguity to the

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[15] Given the central role of the Attorney General in the § 5 preclearance process, such an administrative interpretation is entitled to deference. *U. S. v. Bd. of Comm'rs of Sheffield*, 435 U.S. at 131 ("In recognition of the Attorney General's key role in the formulation of the Act, this Court in the past has given great deference to his interpretations of it."); *Blanding v. Dubose*, 454 U.S. 393, 401 (1982) ("We have frequently stated that courts should grant deference to the interpretation given statutes and regulations by the officials charged with their administration.") (agreeing with Attorney General's interpretation that receipt of certain documents constitutes a request for reconsideration of a previously issued § 5 objection letter, rather than a new submission of a voting change).

Attorney General's interpretation of § 5 to require the review of state statutes under the circumstances of this case, such ambiguity must be resolved against Monterey County. [16]

B. Even If § 5 Does Not Apply to the State Statute's Implementation in Monterey County, the District Court Erred in Concluding that Antecedent County Ordinances Are Exempt From Preclearance Requirements

According to the lower court, the county-wide district "was created by the 1979 amendment to [California Government Code] section 73560 and County Ordinance 2930." J.S. App. 8, Order at 6. And, the lower court concluded, "the 1979 amendment did not need preclearance, and Ordinance 2930 was precleared." *Id.* at 6, n.4. But this Court already has found that, while the preclearance of the 1983 state statute "may well have served to preclear the 1983 County ordinance [2930]," the other antecedent consolidation ordinances are subject to § 5 requirements but "do not appear to have received

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[16] This deference to the United States Attorney General's administrative interpretation of the § 5 preclearance provisions is not without limits. *See Presley v. Etowah County Com'n*, 502 U.S. 491, 508-09 (1992) (Court did not defer to an administrative interpretation provided by the Attorney General, because Congress specifically stated its intent that § 5 reached only those changes affecting voting); *Miller v. Johnson*, 515 U.S. 900, ___ 115 S.Ct. 2475, 2491-2492 (1995)(Although the Court has deferred to the Justice Department's interpretation of the Voting Rights Act in statutory cases, it is inappropriate to do so when the Court is engaged in constitutional scrutiny.). In the present litigation, the Attorney General's interpretation of § 5, requiring the review of state statutes affecting § 5-covered counties, is consistent with the express language of § 5 as well as its legislative history. Thus, this Court should defer to this administrative interpretation.

federal preclearance approval." *Lopez*, 117 S.Ct. at 345. Thus, even if the lower court is correct that the 1979 state statute "did not need preclearance," the county-wide system itself cannot be implemented because the antecedent County ordinances have never been precleared.

These antecedent County ordinances consolidated judicial districts and modified the boundaries of these districts to create the Southern and Central Judicial Districts.[17] The two judicial districts were subsequently incorporated in Monterey County Ordinance No. 2930 and consolidated with the existing municipal court district to create county-wide judicial elections. These antecedent County ordinances must secure § 5 approval. *Id.* at 345.

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[17] For example, the boundaries of the Central Judicial District were established as a result of a series of county ordinances dating from 1972. On November 1, 1968, the date of § 5 coverage, there were two justice court districts in the central part of the County - the Gonzales Judicial District and the Soledad Judicial District. J.S. App. 89, First Amended Complaint at ¶ 13. The County adopted several ordinances which modified the boundaries of these two justice court districts (Monterey County Ordinance No. 1852, adopted on February 1, 1972), *id.*, at ¶¶ 18, 19, consolidated the two districts into the Soledad-Gonzales Judicial District (Monterey County Ordinance No. 1917, adopted on October 3, 1972), *id.* at ¶¶ 20, 21, adjusted the boundaries of the consolidated district (Monterey County Ordinance No. 2139, adopted on January 13, 1976), *id.* at ¶¶ 26, 27, renamed the district to the Central Judicial District (Monterey County Ordinance No. 2212, adopted on September 7, 1976), *id.* at ¶ 35, and adjusted the boundaries of the Central Judicial District, *id.* All of these county ordinances preceded Monterey County Ordinance No. 2930. This Court noted that none of these antecedent county ordinances has received the required § 5 preclearance. *Lopez*, 117 S.Ct. at 345, 348, 349.

Yet the lower court here relied upon "superseding" changes in state law that purportedly "converted the County's judicial election scheme into a state plan thus eliminating the need for preclearance." J.S. App. 6, Order at 4. In a substantially similar context, this Court held that there is a "presumption that the Attorney General will review only the current changes in election practices effected by the submitted legislation, not prior unprecleared changes reenacted in the amended legislation." *Clark v. Roemer,* 500 U.S. 646, 657 (1991). A covered jurisdiction's submission of a "change from one number of judges to another in a particular judicial district does not, by itself, constitute a submission to the Attorney General of the prior voting changes incorporated in the newly amended statute." *Id.* at 658. If, as this Court held, subsequently enacted legislation that is submitted for preclearance cannot serve to preclear antecedent incorporated changes, then surely state legislation that is *not* submitted, even assuming *arguendo* that it is exempt from § 5, cannot serve to preclear the antecedent County ordinances here. For example, the 1979 statute refers to the North Monterey County Judicial District, J.S. App. 32, which is also mentioned in the 1977 statute. J.S. App. 30. However, neither of the two statutes defined the judicial district. The County through a series of ordinances defined the boundaries of the Castroville and Pajaro Justice Districts, consolidated those districts into one district, and renamed the district the North Monterey County Judicial District. *See, e.g.*, Monterey County Ordinance No. 2195, adopted on August 10, 1976 (changing boundaries of the consolidated district and renaming district). J.S. App. 65. Without incorporating these earlier changes by the County, the later-enacted state statutes would be meaningless.

The lower court's reliance upon "superseding" changes in state law also runs afoul of the principle that the "duty to obtain federal approval of new voting standards, practices, or procedures is a continuing one. It arises anew each time the defendant enacts or seeks to administer an uncleared voting regulation." *Dotson v. City of Indianola*, 514 F. Supp. 397, 401

(N.D. Miss. 1981). This construction is consistent with the plain language of § 5 which provides that "[w]henever" a covered jurisdiction "enact[s] or seek[s] to administer" a change in voting practice, preclearance must be obtained. 42 U.S.C. § 1973c.

There is no temporal limitation on the preclearance requirement nor any exception when subsequent legislation amends or "supersedes" the original voting practice change. "[A]ny" change in voting practice in the covered jurisdiction is subject to § 5 and remains so until precleared.

Nonetheless, the State seeks to immunize voting changes in the County from preclearance requirements by actions taken subsequent to the § 5 violation. But the county-wide system was indisputably created by County ordinances, almost all of which have never been precleared. That violation is a "continuing one" and cannot be cured by "superseding" legislation. *Dotson,* 514 F.Supp. at 401. To hold otherwise would sanction a County's enactment of unlawful changes so long as it was later able to obtain superseding state legislation. Section 5 should not be subject to such abuse, and a covered jurisdiction's citizens should not be so easily deprived of a remedy when confronted by unlawfully adopted electoral schemes.

Conclusion

As this Court recently noted in *Morse v. Republican Party of Virginia*, 517 U.S. 186, ___, 116 S.Ct. 1186, 1201 (1996), "[t]he purpose of preclearance is to prevent all attempts to implement discriminatory voting practices that change the status quo." Here, it is undisputed that Monterey County repeatedly changed the status quo without subjecting such changes to § 5 review. *Lopez*, 117 S.Ct. at 345. By exempting those changes from preclearance because a state statute incorporating those changes was subsequently enacted, the lower court employs a

fiction that the changes never existed. Such a distorted reading of § 5 cannot be countenanced.

This Court should instruct the District Court to issue a § 5 injunction requiring that any election system based in any way upon any of the unprecleared state statutes or County ordinances not be implemented unless and until § 5 preclearance has been obtained.

Accordingly, this Court should summarily reverse the judgment of the lower court. Alternatively, this Court should note probable jurisdiction.

Dated: February 23, 1998

Respectfully submitted,

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(2)

Supreme Court, U.S.
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No. _____ OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants*,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JURISDICTIONAL STATEMENT APPENDIX

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Index to Appendix

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Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA,	)	NO. C-91-20559-RMW (EAI)
Plaintiffs,	)	ORDER GRANTING: (1) MOTION TO DISMISS FIRST AMENDED COMPLAINT AND (2) MOTION TO VACATE ORDER EXTENDING JUDICIAL TERMS
v.	)	
MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA,	)	
Defendants,	)	
WENDY DUFFY, in her official capacity as Presiding Judge of the Monterey County Municipal Court District,	)	
Intervenor.	)	

The motions of the State of California ("State") to dismiss the first amended complaint and to vacate this court's September 25, 1996 order extending terms of incumbent judges "whose terms would otherwise expire in January 1997" came before this court on February 20, 1997. Appearances were made on behalf of the State, the County of Monterey ("County"), the presiding judge of the municipal court intervening in her official capacity only with respect to the motion to vacate, the plaintiffs, and the United States as amicus curiae supporting plaintiffs. The court hereby grants both motions.

I. BACKGROUND

The plaintiffs seek in their first amended complaint a declaratory judgment that the failure of the County to preclear its ordinances allegedly merging its separate and inferior court districts into a single, county-wide municipal court served by judges whom county residents elect at large violates § 5 of the Voting Rights Act (42 U.S.C. § 1973c). Plaintiffs seek an injunction against enforcement of these ordinances in order to stop all municipal court judicial elections until the ordinances have been precleared. They also seek an order restraining the County and State from enforcing state constitutional and statutory provisions which would prevent the implementation of a precleared plan.

On March 31, 1993, this court ruled that the challenged ordinances had not received required preclearance.

On November 1, 1995, this court ordered that the County conduct an at-large, county-wide judicial election in March, 1996 and enjoined future elections pending preclearance of a permanent election plan. The Supreme Court reversed that interlocutory judgment and remanded the case for further proceedings. It pointed out that in a case brought under § 5 of the Voting Rights Act,

> [t]he three-judge district court may determine only whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate.

Lopez v. Monterey County, Cal., 117 S. Ct. 340, 349 (1996).

It further observed that

> [t]he County has not discharged its obligation to submit its voting changes to either of the forums designated by Congress. The requirement of federal scrutiny should be satisfied without further delay.

Id.

The State, which was not a party at the time this court originally held that the County had failed to preclear its consolidation ordinances, now moves to dismiss the first amended complaint on the grounds that: (1) although the consolidation ordinances were not submitted for preclearance, intervening changes in California law have converted the County's judicial election scheme into a state plan thus negating the need for preclearance; (2) the complaint is barred by laches; (3) the designation of the County as a covered jurisdiction under § 5 is constitutionally improper; and (4) the consolidation ordinances did not alter a voting "standard, practice or procedure" subject to § 5 preclearance. These threshold contentions are ones the Supreme Court expressly left to this court to consider on remand. See Lopez, 117 S. Ct. at 347. The State also asserts that this court has no power in a § 5 coverage case to suspend any provision of the State Constitution or to order a court-ordered temporary or permanent election plan. As discussed below, the court finds contention (1) dispositive, and, therefore does not address contentions (2) through (4).

The State also requests that the court vacate its September 25, 1996 order extending the terms of the incumbent judges whose terms expired in January 1997 until an election is held or further order of this court. See Order on Motions to Amend Complaint and Extend Judges' Terms dated September 25, 1996 at 2:19-20.

III. ANALYSIS

A. STATE'S MOTION TO DISMISS FIRST AMENDED COMPLAINT

1. § 5 Of The Voting Rights Act Does Not Apply To The State's Enactment Of A Voting Plan For Municipal Court Judges In Monterey County

The plaintiffs, supported by the United States as amicus curiae, argue that § 5 by its own terms applies to any state or political subdivision that "shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968" in a § 5 covered jurisdiction, such as Monterey County. Therefore, plaintiffs argue that even if the judicial plan for electing municipal court judges in the County is considered a state plan, any statutes implementing that plan are subject to preclearance despite the fact that the State of California is not a covered jurisdiction.

Plaintiffs' argument overlooks the opening clause of § 5 which limits application of the section and its preclearance requirements to jurisdictions that have been determined to fall within the coverage formulae set forth in § 4 (b) (42 U.S.C. 1973b(b)). The opening clause of § 5 reads: "Whenever a State or political subdivision with respect to which ... [coverage exists under § 4(b)] ... shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or

procedure with respect to voting ...." Id. (emphasis added). The plain language of the clause does not apply to an uncovered state which "enact(s) or seek(s) to administer" a voting plan in a subordinate, covered county. Further, the purpose of § 5 appears to be to target only those enactments by jurisdictions suspected of abridging the right to vote and not those put in force by a non-covered, superior jurisdiction.[1] Therefore, the question here is whether the State of California, rather than the County, "enact(ed)" and seek(s) to administer" the county-wide voting plan in Monterey County. If so, pre-clearance is not required, as the State is not a covered jurisdiction.

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[1]The court is aware that plaintiffs contend that the regulations set forth in 28 C.F.R. §§ 51.1(a) and 51.23(a) require that any change of voting procedure in a covered jurisdiction must be submitted for preclearance. We do not believe that the regulations should be read that broadly.

The United States as amicus curiae argues that the Supreme Court has interpreted § 5 broadly to apply to all voting changes within a covered jurisdiction, even if an uncovered jurisdiction enacts them. It cites United States v. Board of Comm'rs of Sheffield, Ala., 90 S. Ct. 965 (1978), as authority. However, Sheffield involved the question of whether § 5 applies to any entity (city of Sheffield) exercising control over the election process within a covered state (Alabama). The Court's concern was focused on the fact that the purpose of the Voting Rights Act could be frustrated by covered states "which in the past had been so ingenious in their defiance of the spirit of federal law" if the Act did not apply to all entities within the covered states having power over any aspect of the electoral process within those states. Id. at 121. Here the State of California is not a covered jurisdiction and, therefore, the concern about "ingenious defiance" of federal policy does not exist. The State has not been determined to be suspect under the Voting Rights Act.

2. Superseding Changes In California Law Have Converted The County's Judicial Election Scheme Into A State Plan Thus Eliminating The Need For Preclearance

The California Constitution states that "(e)ach county shall be divided into municipal court districts as provided by statute...." Cal. Const. Art. 6, § 5(a).[2] It further provides that "(t)he Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts." Cal. Const. Art. 6, §5(c).[3] In 1979, California Government Code section 73560 was amended to establish that

> There is the County of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District. This article applies to the municipal court established within the judicial district which shall be known as the Monterey County Judicial Court.

By this amendment to section 73560, the State, pursuant to its constitutional authority, established a single municipal court district. This is confirmed by the Legislative Counsel's Digest of the bill containing the amendment which states: "(t)his bill would repeal the existing provisions relative to the municipal court in Monterey County and enact new provisions establishing a single judicial district for the municipal court in Monterey

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[2]Before the 1995 amendment, section 5(a) provided that "(e)ach county shall be divided into municipal court and justice court districts as provided by statue...."

[3]Before the 1995 amendment, section 5(c) stated that "(t)he Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts."

County...." The amendment implemented a change from the previously established districts and revised the number, classification and compensation of specified personnel in the municipal courts.

Prior to the 1979 amendment to section 73560, a number of county ordinances did consolidate judicial districts. Government Code section 71040 and 71042 permit county boards of supervisors to consolidate judicial districts. However, by the amendment to section 73560 in 1979, the State clearly dictated that Monterey County would have a single municipal court district. As of that date, the County had the one consolidated municipal court district dictated by the State and two justice court districts. The impetus behind consolidation in the County appears to have been the 1972 report of the California Judicial Council which recommended a single, consolidated county-wide judicial district to better effect state policies. See Letter dated August 18, 1972 from Chief Justice of California and Chairman of the Judicial Council to Chairman of the Board of Supervisors including staff study.

In 1983, the State amended Government Code section 73562 to increase the number of judges in the Monterey County Municipal Court District from seven to nine, contingent upon consolidation of that district with the two existing justice court districts. The State submitted this amendment (1983 Cal. Stats. ch. 1249) for preclearance. The Department of Justice requested additional information. After submission of the requested material, the Attorney General interposed no objection. The same year the County, after a required public hearing, effected the consolidation by adoption of Ordinance 2930. The State's submission served to preclear Ordinance 2930. See 28 C.F.R. § 51.14(1981); 28 C.F.R. § 51.15(a) (1987). Thus, as of 1983, Monterey County had one county-wide municipal court district. In 1985, the State enacted an amendment to section 73562 increasing the number of municipal court judges to nine. the Legislative Counsel's

Digest noted that the consolidation contingency had been met justifying the increase. An amendment to section 73560 in 1989, which increased the number of municipal court judges to ten, observed that "the Monterey County Municipal Court District... encompasses the entire County of Monterey."[4]

Even if the State had not precleared Ordinance 2930, the justice courts as they existed prior to consolidation could not exist today since California converted justice courts into municipal courts by amendment to the State Constitution as of January 1, 1995. See Cal. Const. Art. 6, § 5. Further, the justice court districts presumably could not have been made municipal court districts because "(e)ach municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district." Cal. Const. Art. 6, § 5(a). Therefore, when the Constitution was amended, the two justice courts would necessarily have become part of the Monterey County Municipal Court District.

Since the State enacted or precleared the laws establishing the county-wide district and thus county-wide voting, the question arises as to whether § 5 still applies because the County "seek(s) to administer" a voting change by holding an election pursuant to the non-covered State plan. In

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[4]The State argues that the amendment to Government Code section 73560 in 1989 set up the one municipal court district. Section 73560 as amended in 1989 reads: "This article applies to the Monterey County Municipal Court District, which encompasses the entire County of Monterey." The amended statue appears to merely acknowledge what already existed in Monterey County. It did not create the one county-wide district. The district was created by the 1979 amendment to section 73560 and County Ordinance 2930. However, the 1979 amendment did not need preclearance, and Ordinance 2930 was precleared.

Young v. Fordice, 117 S.Ct. 1228 (1997), the Court held that Mississippi, a § 5 covered jurisdiction, has to submit for preclearance the voter registration procedures it intended to administer in order to comply with the National Voter Registration Act. In the present case, however, plaintiffs are not objecting to any particular procedural plan by which the County intends to administer voting for a county-wide district. They are objecting to the consolidation itself. Although neither the Voting Rights Act nor any case specifically defines "seek(s) to administer," it is clear that it must involve some exercise of policy choice and discretion by the covered jurisdiction. See id. The County, as a subordinate jurisdiction of the State, lacks the discretion to choose a voting plan that does not involve a county-wide district.

B. STATE'S MOTION TO VACATE ORDER EXTENDING JUDICIAL TERMS

On September 25, 1996, this court granted plaintiffs' motion to extend the terms of incumbent judges "whose terms would otherwise expire in January 1997...until an election is held or further order of this court." September 25, 1996 Order at 2:19-20. The State submits that the order should be vacated. The court agrees. Since the court has decided that plaintiffs' complaint should be dismissed, it no longer has a basis for enjoining elections or extending terms. Although eight incumbent judges whose terms have expired will immediately become "holdovers," they will hold office until a successor is elected and qualifies or the governor appoints a successor. See Govt. Code §§ 71145 and 71180. The court is mindful of the presiding judge's concern about stability of the Municipal Court but does not believe it should further delay the County from proceeding in accordance with State-enacted policy.

III. ORDERS

The State's motion to dismiss plaintiffs' second

amended complaint is granted. The court's September 25, 1996 order extending terms of incumbent judges is vacated and those terms, therefore, expire on the date of this order. Judgment shall be entered on the second amended complaint in favor of defendant State and provide that plaintiffs are not entitled to any of the declaratory and injunctive relief they request. Pursuant to plaintiffs' request, the court retains jurisdiction to decide any application for attorneys' fees previously submitted or to be timely submitted by plaintiffs pursuant to Civil Local Rule 54-5.

Plaintiffs also request that this order be stayed pending application to the Supreme Court for a stay pending the outcome of any appeal. The court declines to enter a stay as that would affect the County's ability to comply with the filing periods for the direct primary to be held on June 2, 1998.

Dated: 12/19/97

/s/
Three Judge Panel, by
Ronald M. Whyte
United States District Judge

FILED
December 19, 1997
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, Defendants, WENDY DUFFY, in her official capacity as Presiding Judge of the Monterey County Municipal Court District, Intervenor.	NO. C-91-20559-RMW (EAI) JUDGMENT OF DISMISSAL

On December 19, 1997, the court granted the motion of the State of California to dismiss plaintiffs' first amended complaint. Therefore,

IT IS HEREBY ORDERED that the first amended complaint is dismissed and judgment is entered against plaintiffs and in favor of defendants State of California and County of Monterey. Plaintiffs are not entitled to the declaratory and injunctive relief they seek. Any applications for costs or attorneys' fees may be filed in accordance with the Civil Local Rules and the Federal Rules of Civil Procedure.
Dated: 12/19/97

/s/
Three Judge Panel, by
Ronald M. Whyte
United States District Judge

Entered December 22, 1997

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Original
FILED
December 24, 1997
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,	)	NO. C-91-20559-RMW (EAI)
Plaintiffs,	)	Voting Rights Action Three Judge Court
v.	)	Circuit Judge Mary M. Schroeder
MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA,	)	District Judge James Ware
Defendants,	)	District Judge Ronald M. Whyte
WENDY DUFFY, in her official capacity as Presiding Judge of the Monterey County Municipal Court District,	)	
Intervenor.	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Vicky M. Lopez, Crescencio Padilla, William A. Melendez and David Serena, the plaintiffs

above-named, appeal to the Supreme Court of the United States from the Order Granting: (1)Motion to Dismiss First Amended Complaint and (2) Motion to Vacate Order Extending Judicial Terms and the Judgment of Dismissal filed in this action on December 19, 1997 and entered on December 22, 1997.

This appeal is taken pursuant to Title 28, United States Code, Sections 1253 and 1291 and Title 42, United States Code, Section 1973c.

Dated: December 24, 1997

Joaquin G. Avila
Barbara Y. Phillips
Robert Rubin
Denise M. Hulett

By: /s/
Nancy M. Stuart

Attorneys for Plaintiffs

§ 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such as State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b (f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure

may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

CALIFORNIA GOVERNMENT CODE

§ 73562. Judges

There * * * shall be 10 judges of the Monterey County Municipal Court District.
(Amended by Stats.1993, c. 1091 (A.B.2207), § 38.)

CALIFORNIA GOVERNMENT CODE

§ 25200. Division of county into districts; creation of districts

The board of supervisors may divide the county into election, school, road, supervisorial, sanitary, and other districts required by law, change their boundaries, and create other districts, as convenience requires.

CALIFORNIA GOVERNMENT CODE

§ 71040. Creation; changes; restrictions

As public convenience requires, the board of supervisors shall divide the county into judicial districts for the purpose of electing judges and other officers of municipal and justice courts, and may change district boundaries and create other districts. No city or city and county shall be divided so as to lie within more than one district.

CHAPTER 1476

An act providing for the constitution of the municipal court in a district embracing the Cities of Carmel and Monterey, and prescribing the number and compensation of the judges, officers and attaches thereof.

[APPROVED BY GOVERNOR JULY 12, 1951. Filed with Secretary of State July 13, 1951.]

The people of the State of California do enact as follows:

SECTION 1. The municipal court established in a district embracing the Cities of Carmel and Monterey shall be constituted, and the judges, officers and attaches thereof shall receive compensation, as follows:

(1) There shall be one judge, who shall receive eight thousand dollars ($8,000) per annum, payable in equal monthly installments.

CHAPTER 206

An act to add Title 8 to the Government Code, to consolidate and revise the law relating to a system of courts of the State and judges, officials, attaches and employees thereof, to repeal acts as parts of acts specified therein, and to amend Sections 61.4, 269, and 274c of the Code of Civil Procedure, to repeal Section 36 of the Code of Civil Procedure, and to add Section 3020.5 to the Government Code.

In effect September 9, 1953

[APPROVED BY GOVERNOR APRIL 13, 1953. Filed with Secretary of State April 15, 1953.]

The people of the State of California do enact as follows:

SECTION 1. Title 8 is added to the Government Code, to read:

TITLE 8. THE ORGANIZATION AND GOVERNMENT OF COURTS

Article 7. Carmel and Monterey

73560. This article applies to the municipal court established in a district embracing the Cities of Carmel and Monterey.

73561. There shall be one judge, who shall receive eight thousand dollars ($8,000) annually.

Article 22. Salinas

74220. This article applies to the municipal court established in a district embracing the City of Salinas.

74221. There shall be one judge, who shall receive eight thousand dollars ($8,000) annually.

CHAPTER 908

An act to amend Sections 74221, 74222, 74223, 73562 and 73563 of the Government code, relating to municipal courts in Monterey County.

[Approved by Governor June 8, 1957. Filed with Secretary of State June 8 , 1957.]

The people of the State of California do enact as follows:

SECTION 1. Section 74221 of the Government Code is amended to read:

74221. There shall be two judges.

CHAPTER 1344

An act to amend Section 73561 of the Government code, relating to the number of judges in the municipal court in the district embracing the Cities of Carmel and Monterey.

[Approved by Governor June 30, 1959. Filed with Secretary of State July 1, 1959.]

The people of the State of California do enact as follows:

SECTION 1. Section 73561 of the Government Code is amended to read:

73561. There shall be two judges.

CHAPTER 944

An act to amend Sections 73561 and 74001 of the Government Code, relating to municipal courts.

[Approved by Governor August 16, 1972. Filed with Secretary of State August 16 , 1972.]

The people of the State of California do enact as follows:

SECTION 1. Section 73561 of the Government Code is amended to read:

73561. There shall be three judges.

CHAPTER 1312

An act to amend Section 74221 of the Government Code, relating to municipal courts.

[Approved by Governor September 25, 1974. Filed with Secretary of State September 25, 1974.]

The people of the State of California do enact as follows:

SECTION 1. Section 74221 of the Government Code is amended to read:

74221. There shall be three judges.

MUNICIPAL COURTS-MONTEREY COUNTY

CHAPTER 966

ASSEMBLY BILL NO. 336

An act to repeal and add Article 7 (commencing with Section 73560), and to repeal Article 22 (commencing with Section 74220) of Chapter 10 of Title 8 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

Existing law makes provision for a municipal court embracing the Cities of Carmel and Monterey and for a municipal court em-

[page] 2541

bracing the City of Salinas and prescribe various duties, salaries, and also compensation schedules for the officers, employees and attaches of the court.

This bill would revise such provisions to create a single statutory scheme for municipal courts in Monterey County. The former Carmel-Monterey district would also embrace the Cities of Seaside, Sand City and Del Rey Oaks, while the jurisdiction of the Salinas district would not be changed. Various revisions would be made in regard to the organization of such municipal court districts, as well as in the compensation and salary schedules of the officers, attaches and employees of the court.

This bill would also provide that no appropriation is made by the bill nor shall any reimbursement be made for any other costs incurred by any local government entity pursuant to the bill for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 7 (commencing with Section 73560) of Chapter 10 of Title 8 of the Government Code is repealed.

SEC. 2 Article 7 (commencing with Section 73560) is added to Chapter 10 of Title 8 of the Government Code, to read:

ARTICLE 7. MUNICIPAL COURTS IN THE COUNTY OF MONTEREY 73560.

This article applies to municipal courts established in the following judicial districts in the County of Monterey.

(a) A district embracing the Cities of Monterey, Carmel, Seaside, Sand City, and Del Rey Oaks designated as the Monterey-Carmel Judicial District;

(b) A district embracing the City of Salinas designated as the Salinas Judicial District.

73561.

Each of the municipal court districts established in the County of Monterey shall have the number of judges set out below opposite the name of the judicial district over which such court has jurisdiction:

Monterey-Carmel Judicial District	3
Salinas Judicial District	3

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MUNICIPAL COURTS-MONTEREY COUNTY-OFFICERS AND EMPLOYEES

CHAPTER 995

ASSEMBLY BILL NO. 1787

An act to amend Sections 73560, 73561, 73561.2, 73562, 73563, 73564, 73565 and 73566 of, and to repeal Sections 74221.1 and 74221.2 of, the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

Existing law authorizes the establishment of 2 municipal court districts in Monterey County.

This bill would authorize the establishment of the North Monterey County Judicial District, would provide for the number of compensation of various personnel, and would provide that the officers and employees of the Castroville-Pajaro Judicial District shall succeed to position in the North Monterey County Judicial District.

Existing law prescribes the number of, and compensation for, other municipal court employees in Monterey County.

This bill would increase the number of, and compensation for, specified personnel in the other municipal court in Monterey County.

Existing law specifies that there shall be 2 court commissioners for the Salinas Judicial District.

This bill would repeal such provisions.

The bill would also provide that no appropriation or reimbursement shall be made because the act is in accordance with the request of a local government entity or entities which desire authority to act pursuant to the act. [page]2907

The people of the State of California do enact as follows:

SECTION 1. Section 73561 of the Government Code is amended to read: 73560.

This article applies to all of the municipal courts established * * * in the County of Monterey, which are in judicial districts entitled as follows: The Monterey Peninsula Judicial District, the Salinas Judicial District, and the North Monterey County Judicial District. * * *

SEC. 2. Section 73561 of the Government Code is amended to read: 73561.

Each of the municipal court districts established in the County of Monterey shall have the number of judges set out below opposite the name of the judicial district over which such court has jurisdiction:

Monterey *** Peninsula Judicial District 3
Salinas Judicial District 3
North Monterey County Judicial District 1

[deletions by asterisks ***]
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MUNICIPAL COURTS-MONTEREY COUNTY

CHAPTER 694

ASSEMBLY BILL NO. 628

An act to amend Section 74693 of, and to repeal and add Article 7 (commencing with Section 73560) of Chapter 10 of Title 8 of, the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

Existing law establishes the judicial districts for the municipal court in Monterey County and prescribes the number, classification, and compensation of municipal court personnel in Monterey and Santa Cruz Counties.

This bill would repeal the existing provisions relative to the municipal court in Monterey County and enact new provisions establishing a single judicial district for the municipal court in Monterey County, and revise the number, classification, and compensation of specified personnel in the municipal courts in Monterey and Santa Cruz Counties. The bill also would require the Board of Supervisors of Monterey County to fix the compensation of official court reporters pro tempore of the municipal court in Monterey County at the rate of $55 per diem and would authorize the supervisors to adjust such rate.

Under existing law Section 2231 an 2234 of the Revenue and Taxation Code provide that the state shall reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill provides that no appropriation is made by this

act pursuant to Section 2231 or 2234 for a specified reason, but recognizes that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

The people of the State of California do enact as follows:

SECTION 1. Article 7(commencing with Section 73560) of Chapter 10 of the Title 8 of the Government Code is repealed.

SEC. 2. Article 7 (commencing with Section 73560) is added to Chapter 10 of Title 8 of the Government Code, to read:

ARTICLE 7. MONTEREY COUNTY

73560.

There is in the County of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District. This article applies to the municipal court established within the judicial district which shall be known as the Monterey County Municipal Court.

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MUNICIPAL COURTS-SAN JOAQUIN, MONTEREY AND SAN DIEGO COUNTIES

Senate Bill No. 676

CHAPTER 1249

An act to amend Section 73481 73562, 73565, 73566, 73567, 73568, 73643, 73953, 73959.2, 74343, 74343.4, 74361, 74364 and 74743 of, and to repeal Section 73481.5 of, the Government Code, relating to courts.

[Approved by Governor September 29, 1983. Filed with Secretary of State September 30, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

SB 676, Mello. Courts: San Joaquin, Monterey, and San Diego Counties.

(1) Existing law provides for one judge and one court commissioner for the Lodi Municipal Court District.

This bill would increase the number of judges of the Lodi Municipal Court from 1 to 2, and repeal the authorization for a court commissioner for that district.

(2) Existing law provides for 7 judges of the Monterey County Municipal Court District.

This bill would increase the number of judges of the Monterey County Municipal Court District from 7 to 9, contingent upon consolidation of that district with specified justice court districts.

(3) Existing law specifies the number, compensation and classification of municipal court personnel in Monterey and San Diego Counties.

This bill would revise the number, compensation and classification of municipal court personnel in Monterey and San

Diego Counties.

(4) Article XIII B of the California Constitution and Section 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 73481 of the Government Code is amended to read:

[page] 7254 73481. There shall be <u>two judges</u>.

SEC. 2. Section 73481.5 of the Government Code is repealed.

SEC. 3. Section 73562 of the Government Code is amended to read:

73562 There shall be seven judges of the Monterey County Municipal Court District, <u>provided, that at such time as the Central and Southern Justice Court District are consolidated with the Monterey County Municipal Court District, there shall be nine judges of the Monterey County Municipal Court District</u>.

MONTEREY COUNTY MUNICIPAL COURT DISTRICT-CONSOLIDATION-PERSONNEL

Senate Bill No. 1245

CHAPTER 659

An act to amend Section 73562, 73563, 73566, and 73568 of the Government Code, relating to courts.

[Approved by Governor September 16, 1985. Filed with Secretary of State September 17, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1245, Mello. Courts.

(1) Existing law provides for 7 judges of the Monterey County Municipal Court District, however, upon a specified consolidation of judicial districts, there shall be 9 judges. That consolidation has occurred, raising the number of judges of the Monterey County Municipal Court District from 7 to 9.

This bill would amend those provisions to reflect that consolidation.

(2) Existing law provides for the number, compensation and classification of municipal court personnel of the Monterey County Municipal Court District.

This bill would revise the number, classification, compensation, and duties of the personnel of the Monterey County Municipal Court District, thereby imposing a state-mandated local program by requiring a higher level of service under an existing program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the [page] 249

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 73562 of the Government Code is amended to read:

73562. There shall be nine judges of the Monterey County Municipal Court District. [page] 250

CHAPTER 1211

An act to repeal Section 1141.105 of the Code of Civil Procedure, to amend Sections 69103, 69104, 69105, 69106, 69582, 69585.5, 69586, 69587, 69590.7, 69591, 69592, 69593, 69594, 69595, 69598, 69599, 69600, 69608, 69610, 69613, 69614, 69615, 72602.3, 72602.4, 72602.5, 72602.12, 72602.20, 73101.5, 73562, 73702, 73951, 74131, 74341, 74661, 74691, 74781, 74831, 74901, 77001, 77200, 77201, 77202, 77301, and 77400 of, to add Sections 69605.5, 77002, 777206, 77207, and 77502 to, to repeal and add Section 74921 of, and Article 7 (commencing with Section 77600) of Chapter 13 of Title 8 of, and to repeal Section 77403 of, the Government Code, to amend Section 1078 of, and to add Section 1387.1 to, the Penal Code, to amend Section 97,98, and 11005 of, and to add Section 97.35 to, the Revenue and Taxation Code, and to amend Section 23 of Chapter 1607 of the Statutes of 1985, relating to

fiscal affairs, and making an appropriation therefor.

[Approved by Governor September 27, 1987. Filed with Secretary of State September 27, 1987.]

The people of the State of California do enact as follows:

SEC. 30. Section 73562 of the Government Code is amended to read:

73562. There shall be nine judges of the Monterey County Municipal Court District. However, if the board of

supervisors finds there are sufficient funds for an additional judge and adopts a resolution to that effect, there shall be 10 judges.

CHAPTER 608

An act to amend Sections 73560, 73562, 73565, 73566, 73567, 73568, 74691, 74693, and 74693.1 of the Government Code, relating to courts.

[Approved by Governor September 20, 1989. Filed with Secretary of State September 21, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 73560 of the Government Code is amended to read:

73560. This article applies to the Monterey County Municipal Court District, which encompasses the entire County of Monterey.

SEC. 2. Section 73562 of the Government Code is amended to read:

73562. There are 10 judges of the Monterey County Municipal Court District.

CHAPTER 1091

An act to amend Sections 69893.5, 69900, 69994.2, 70045.77, 72607, 72608, 72609, 72627.5, 72646, 72703, 72704, 72704.5, 72763, 72764, 72766, 72767, 72770, 72771, 72777, 72778, 72779, 72780, 72782, 72784, 73084.1, 73084.2, 73084.3, 73084.4, 73084.5, 73086, 73089, 73096, 73346, 73348, 73351, 73354, 73358, 73484, 73485, 73487, 73489, 73562, 73565, 73566, 73567, 73568, 73601, 73602, 73682, 73683, 73684, 73691, 73692, 73705, 73706, 73710, 73713, 73715, 73793, 73794, 73796, 73797, 73798, 74023, 74030, 74134, 74136, 74138, 74141, 74143, 74191.7, 74192, 74193, 74201, 74207, 74208, 74502, 74503, 74504, 74607, 74642, 74643, 74644, 74645, 74693, 74705, 74708, 74803, 74805, 74807, 74808, 74809, 74905, 74907, 74909, 74912, 74921.9, 74921.10, 74921.11, 74937, 74940, 74953, 74954, 74954.5, 74955, 74956, 74984, 74985, 74986, and 74987 of, to add Sections 72771.1, 72778.1, and 73357 to, to repeal and add Sections 73353 and 73773 of, and to repeal Sections 73703, 73717, and 74807.6 of, the Government Code, relating to courts.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2207, Committee on Judiciary. Courts.

(1) Existing law provides for the number, classification, and compensation of various municipal court personnel in Alameda, Butte, Contra Costa, El Dorado, Fresno, Los Angeles, Marin, Merced, Monterey, Napa, Placer, Riverside, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sonoma, Tulare, and Ventura Counties and the City and County of San Francisco, and provides for the number, classification, and compensation of various superior court personnel in El Dorado and Sacramento Counties and the City

and County of San Francisco.

This bill would revise the number, classification, and compensation of various municipal court personnel in Alameda, Butte, Contra Costa, El Dorado, Fresno, Los Angeles, Marin, Merced, Monterey, Napa, Placer, Riverside, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sonoma, Tulare, and Ventura Counties and the City and County of San Francisco, and provides for the number, classification, and compensation of various superior court personnel in El Dorado and Sacramento Counties and the City and County of San Francisco, thereby imposing a state-mandated local program by requiring a higher level of service under an existing program.

(2) Existing law provides that the present incumbents of judicial positions in the Manteca-Ripon-Escalon-Tracy Judicial District, de jure or de facto, or their successors, shall succeed to the judicial

positions created under other provisions of law, as specified.

This bill would eliminate that provision.

(3) This bill would set forth findings of the Legislature regarding the review of changes in the number and compensation of municipal court employees. The bill would direct the Judicial Council to review the procedures now governing municipal court staffing legislation, and would require the Judicial Council to report to the Legislature on options for revision on or before January 1, 1994.

(4) This bill would incorporate additional changes in Sections 69893.5 and 74191.7 of the Government Code proposed by AB 480, contingent on its prior enactment.

(5) The California Costitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by

this act for a specified reason.

The people of the State of California do enact as follows:

Ch. 1091 -46-

SEC. 38. Section 73562 of the Government Code is amended to read:

73562. There shall be 10 judges of the Monterey County Municipal Court District.

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 1347 Adopted -)
Changing Boundaries of)
Judicial Districts. . . . .)

Ordinance No. 1347, being an ordinance changing the boundaries of Judicial Districts and thereby abolishing Bradley, Cholame, Peachtree, San Antonio and San Ardo Judicial Townships, and changing the boundaries of the other judicial townships in the County of Monterey, is adopted and ordered published by the following vote, to-wit:

AYES: Supervisors Deaver, Atteridge, Henry and Echeberria.

NOES: None.

ABSENT: Supervisor Hudson.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, EMMET G. McMENAMIN, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 16, on the 30th day of March, 1964, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 30th day of March, 1964.

EMMET G. McMENAMIN,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 1347

AN ORDINANCE CHANGING THE BOUNDARIES OF JUDICIAL DISTRICTS.

The Board of Supervisors of the County of Monterey do ordain as follows:

SECTION 1.

The Bradley, Cholame, Peachtree, San Antonio and San Ardo Judicial Townships are abolished, and the boundaries of the other judicial townships in the County of Monterey are changed, so that the county may be, and it is hereby, divided into judicial districts having the boundaries and names hereinafter prescribed.

SECTION 2.

(1) The Salinas Judicial District is bounded as follows: [metes and bounds description omitted]

SALINAS JUDICIAL DISTRICT

[metes and bounds description omitted]

(2) The Monterey-Carmel Judicial District is bounded as follows:

[metes and bounds description omitted]

(3) The Pajaro Judicial District is bounded as follows: [metes and bounds description omitted]

(4) The Castroville Judicial District is bounded as follows: [metes and bounds description omitted]

(5) The Pacific Grove Judicial District is bounded as follows:

All of the territory included within the corporate limits of the City of Pacific Grove, California.

(6) The Gonzales Judicial District is bounded as follows: [metes and bounds description omitted]

(7) The Soledad Judicial District is bounded as follows: [metes and bounds description omitted]

(8) The Greenfield Judicial District is bounded as follows: [metes and bounds description omitted]

(9) The King City Judicial District is bounded as follows: [metes and bounds description omitted]

(10) The San Ardo Judicial District is bounded as follows: [metes and bounds description omitted]

SECTION 3.

Ordinance No. 763 of the County of Monterey, passed May 1, 1951 and entitled, "An Ordinance for the Creation and Establishment of Municipal Justice Courts Within the County of Monterey, The Boundaries thereof, and the Number of Judges of Each Court,": and Ordinance No. 796, passed April 14, 1952, amending the same, are repealed.

PASSED AND ADOPTED this 30th day of March, 1964 by the following vote:

Aye: Supervisor Deaver, Atteridge, Henry, Echeberria.

No: None.

Absent: Supervisor Hudson.

/s/

Chairman of the Board of Supervisors
of the County of Monterey

Attest:
Emmet G. McMenamin
Clerk of said Board
By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 1597 Adopted -)
Amending Ordinance No. 1347,)
Changing Boundaries of)
Judicial Districts . . . . .)

Ordinance No. 1597, being an ordinance amending Ordinance No. 1347, thereby amending subdivision (3) of section 2 relating to the boundaries of the Castroville-Pajaro Judicial District and repealing subdivision (4) of Section 2 thereof, is hereby adopted and ordered published by the following vote, to-wit:

AYES: Supervisors Atteridge, Smith and Branson.
NOES: Supervisors Church and Wood.
ABSENT: None.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, EMMET G. McMENAMIN, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 22, on the 26th day of March, 1968, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 26th day of March, 1968.

EMMET G. McMENAMIN,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 1597

AN ORDINANCE AMENDING ORDINANCE NO. 1347, CHANGING THE BOUNDARIES OF JUDICIAL DISTRICTS.

The Board of Supervisors of the County of Monterey do ordain as follows:

SECTION 1.

Ordinance No. 1347, passed and adopted March 30, 1964, is amended by amending subdivision (3) of section 2 thereof to read as follows:

(3) The Castroville-Pajaro Judicial District is bounded as follows: [metes and bounds description omitted]

SECTION 2.

Said Ordinance No. 1347 is further amended by repealing subdivision (4) of Section 2 thereof.

PASSED AND ADOPTED this 26th day of March, 1968, by the following vote:

AYES: Supervisors Atteridge, Smith and Branson.
NOES: Supervisors Church and Wood.
ABSENT: None.

Attest:
Emmet G. McMenamin
Clerk of said Board

/s/
Chairman of the Board of Supervisors of Monterey County

By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 1654 adopted,)
Amending Ordinance No. 1347,)
Changing Boundaries of)
Judicial Districts . . . . .)

Ordinance No. 1654, being an ordinance amending Ordinance No. 1347, changing the boundaries of Judicial Districts, thereby amending subdivisions (1), (2) and (3) of Section 2 thereof relating to the Salinas Judicial District, the Monterey-Carmel Judicial District and the Castroville-Pajaro Judicial District is hereby adopted and ordered published on the motion of Supervisor Church, seconded by Supervisor Smith, and carried by the following vote, to-wit:

AYES: Supervisor Church, Wood, Smith and Branson.
NOES: None.
ABSENT: Supervisor Atteridge.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, EMMET G. McMENAMIN, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 23, on the 11th day of March, 1969, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 11th day of March, 1969.

EMMET G. McMENAMIN,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.
By /s/
Deputy.

ORDINANCE NO. 1654

AN ORDINANCE AMENDING ORDINANCE NO. 1347, CHANGING THE BOUNDARIES OF JUDICIAL DISTRICTS.

The Board of Supervisors of the County of Monterey do ordain as follows:

SECTION 1.

Ordinance NO. 1347, passed and adopted March 30, 1964, is amended by amending subdivision (1) of Section 2 thereof to read as follows:

(1) The Salinas Judicial District is bounded as follows: [metes and bounds description omitted]

SECTION 2.

Said Ordinance No. 1347 is further amended by amending subdivision (2) of said Section 2 thereof to read as follows:

(2) The Monterey-Carmel Judicial District is bounded as follows: [metes and bounds description omitted]

SECTION 3.

Said Ordinance No. 1347 is further amended by amending subdivision (3) of said Section 2 thereof to read as follows:

(3) The Castroville-Pajaro Judicial District is bounded as follows: [metes and bounds description omitted]

PASSED AND ADOPTED this 11th day of March, 1969, by the following vote:

AYES: Supervisor Church, Wood, Smith and Branson.
NOES: None.
ABSENT: Supervisor Atteridge.

Attest: Emmet G. McMenamin, Clerk

/s/
Chairman of the Board of
Supervisors of the County of Monterey

By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 1852 Adopted,)
Amending Ordinance No. 1347,)
Establishing the Boundaries)
of Judicial Districts . . . . .)

Ordinance No. 1852, being an ordinance amending Ordinance No. 1347, establishing the boundaries of Judicial Districts, is hereby adopted and ordered published by the following vote, upon motion of Supervisor Smith, seconded by Supervisor Tavernetti, and carried, to wit:

AYES: Supervisor Church, Atteridge, Tavernetti and Smith.

NOES: Supervisor Branson.

ABSENT: None.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 27, on the 1st day of February, 1972, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 1st day of February, 1972.

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 1852

AN ORDINANCE CHANGING THE BOUNDARIES OF JUDICIAL DISTRICTS

The Board of Supervisors of the County of Monterey do ordain as follows:

Ordinance No. 1347, passed and adopted March 30, 1964, is amended by amending Section 2 thereof to read as follows: [metes and bounds description omitted]

Section 2.

(a) The Salinas Judicial District is bounded as follows: [metes and bounds description omitted]

(b) The Monterey-Carmel Judicial District is bounded as follows: [metes and bounds description omitted]

(c) The Castroville-Pajaro Judicial District is bounded as follows: [metes and bounds description omitted]

(d) The Pacific Grove Judicial District is bounded as follows: [metes and bounds description omitted]

(e) The Gonzales Judicial District is bounded as follows: [metes and bounds description omitted]

(f) The Soledad Judicial District is bounded as follows: [metes and bounds description omitted]

(g) The Greenfield Judicial District is bounded as follows: [metes and bounds description omitted]

(h) The King City Judicial District is bounded as follows: [metes and bounds description omitted]

(i) The San Ardo Judicial District is bounded as follows: [metes and bounds description omitted]

PASSED AND ADOPTED the 1st day of February, 1972, by the following vote:

AYES: Supervisor Church, Atteridge, Tavernetti, Smith.

NOES: Supervisor Branson.

ABSENT: None.

/s/
Chairman of the Board of
Supervisors of the County of Monterey

ATTEST:

ERNEST A. MAGGINI,
Clerk of said Board.

By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 1917 Adopted,)
Amending Ordinance No. 1347,)
Changing the Boundaries of)
Judicial Districts . . . . .)

Ordinance No. 1917, being an Ordinance amending Ordinance No. 1347, changing the boundaries of judicial districts, relating to the Soledad-Gonzales Judicial District is hereby adopted and ordered published by the following vote, upon motion of Supervisor Tavernetti, seconded by Supervisor Branson, and carried:

AYES: Supervisor Church, Atteridge, Tavernetti, Smith and Branson

NOES: None.

ABSENT: None.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 28, on the 3rd day of October, 1972, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 3rd day of October, 1972.

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 1917

AN ORDINANCE AMENDING ORDINANCE NO. 1347, CHANGING THE BOUNDARIES OF JUDICIAL DISTRICTS

The Board of Supervisors of the County of Monterey do ordain as follows:

SECTION 1.

Ordinance No. 1347, passed and adopted March 30, 1964, is amended by amending subdivision (e) of section 2 thereof to read as follows:

(e) the Soledad-Gonzales Judicial District is bounded as follows: [metes and bounds description omitted]

SECTION 2.

Said Ordinance No. 1347 is further amended by repealing subdivision (f) of section 2 thereof.

PASSED AND ADOPTED this 3rd day of October, 1972, by the following vote:

AYES: Supervisor Church, Atteridge, Tavernetti, Smith and Branson

NOES: None.

ABSENT: None.

/s/
Chairman of the Board of
Supervisors of Monterey County

ATTEST:
ERNEST A. MAGGINI
Clerk of said Board

By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 1999 Adopted,)
Amending Ordinance No. 1347,)
Changing the Boundaries of)
Judicial Districts . . . . .)

Ordinance No. 1999, being an ordinance amending Ordinance No. 1347, changing the boundaries of Judicial Districts, is hereby adopted and ordered published by the following vote, upon motion of Supervisor Atteridge, seconded by Supervisor Church:

AYES: Supervisor Church, Atteridge, and Tavernetti.
NOES: None.
ABSENT: Supervisors Poyner and Branson.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 29, on the 13th day of November, 1973, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 13th day of November, 1973.

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 1999

AN ORDINANCE AMENDING ORDINANCE NO. 1347, CHANGING THE BOUNDARIES OF JUDICIAL DISTRICTS.

The Board of Supervisors of the County of Monterey do ordain as follows:

SECTION 1.

Ordinance No. 1347, passed and adopted March 30, 1964, is amended by amending subdivision (h) of Section 2 thereof to read as follows:

(h) The King City-Greenfield Judicial District is bounded as follows: [metes and bounds description omitted]

SECTION 2.

Said Ordinance No. 1347 is further amended by repealing subdivision (g) of Section 2 thereof.

SECTION 3.

This ordinance shall be operative on and after January 1, 1974, PASSED AND ADOPTED this 13th day of November, 1973, by the following vote:

AYES: Supervisors Church, Atteridge and Tavernetti.
NOES:
ABSENT: Supervisors Poyner and Branson.

/s/
Chairman of the Board of
Supervisors of Monterey County

ATTEST:
ERNEST A. MAGGINI
Clerk of said Board.

By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 2138, Adopted,)
Amending Ordinance No. 1347)
Changing Boundaries of the)
Judicial District re: Marina . . . .)

Ordinance No 2138, having been introduced and the reading waived on January 6, 1976, and being an ordinance amending Ordinance No. 1347 changing the boundaries of Judicial Districts re: Marina is hereby adopted and ordered published by the following vote, upon motion of Supervisor Farr, and seconded by Supervisor Norris:

AYES: Supervisors Church, Norris, Petrovic, Poyner, Farr.

NOES: None.

ABSENT: None.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 32, on the 13th day of January, 1976, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 13th day of January, 1976.

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 2138

AN ORDINANCE AMENDING ORDINANCE NO. 1347 CHANGING THE BOUNDARIES OF JUDICIAL DISTRICTS.

The Board of Supervisors of the County of Monterey do ordain as follows:

Ordinance No. 1347, passed and adopted March 30, 1964, is amended by amending subdivision (a), (b) and (c) of Section 2 thereof to read as follows:

(a) The Salinas Judicial District is bounded as follows: [metes and bounds description omitted]

(b) The Monterey-Carmel Judicial District is bounded as follows: [metes and bounds description omitted]

(c) The Castroville-Pajaro Judicial District is bounded as follows: [metes and bounds description omitted]

PASSED AND ADOPTED this 13th day of January, 1976, by the following vote:

AYES: Supervisor Church, Norris, Petrovic, Poyner, Farr.

NOES: None.

ABSENT: None.

/s/
Chairman of the Board of
Supervisors of Monterey County

ATTEST:

ERNEST A. MAGGINI
Clerk of said Board.

By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 2139, Adopted,)
An Ordinance Dividing the County)
of Monterey into Judicial Districts)
and Setting Forth the Boundaries of)
Said Districts . . . . . .)

Ordinance No 2139, having been introduced and the reading waived on January 6, 1976, and being an ordinance dividing the County of Monterey into Judicial Districts and setting forth the boundaries of said districts is hereby adopted and ordered published by the following vote, upon motion of Supervisor Petrovic, and seconded by Supervisor Farr:

AYES: Supervisors Church, Norris, Petrovic, Poyner, Farr.

NOES: None.

ABSENT: None.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 32, on the 13th day of January, 19 76, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 13th day of January, 19 76.

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 2139

AN ORDINANCE DIVIDING THE COUNTY OF MONTEREY INTO JUDICIAL DISTRICTS AND SETTING FORTH THE BOUNDARIES OF SAID DISTRICTS

The Board of Supervisors of the County of Monterey do ordain as follows:

Section 1.

The County of Monterey is hereby divided into Judicial Districts, the names and boundaries thereof being as hereinafter set out.

Section 2.

(a) The Monterey-Carmel Judicial District is bounded as follows: [metes and bounds description omitted]

(b) The Salinas Judicial District is bounded as follows: [metes and bounds description omitted]

(c) The Castroville-Pajaro Judicial District is bounded as follows: [metes and bounds description omitted]

[Soledad-Gonzales Judicial District][metes and bounds description omitted]

Section 3.

Ordinance No. 1347 changing the boundaries of Judicial Districts, passed and adopted March 30, 1964, is repealed to the extent and at the times hereinafter set forth.

Section 4.

This ordinance shall take effect thirty days after its adoption but shall not be operative until January 2, 1977, it being the intent of this ordinance to eliminate certain Judicial Districts, to wit: The Pacific Grove, King City-Greenfield and San Ardo Judicial Districts, insofar as the election of justice court judges for said districts in 1976 is concerned, but without affecting the term of any judge who is serving as such on the

date of passage of this ordinance.

PASSED AND ADOPTED this 13th day of January, 1976, by the following vote:

AYES: Supervisors Church, Norris, Petrovic, Poyner, Farr.

NOES: None.

ABSENT: None.

/s/
Chairman of the Board of
Supervisors of Monterey County

ATTEST:

Ernest A. Maggini
Clerk of said Board.

By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 2195, Adopted, Amending)
Ordinance No. 2139, Dividing the)
County of Monterey into Judicial Dist-)
ricts, re: the North Monterey County)
Judicial District . . . . .)

Ordinance No 2195, having been introduced and the reading waived on July 20, 1976, and being an ordinance amending Ordinance No. 2139, dividing the County of Monterey into Judicial Districts, regarding the North Monterey County Judicial District, thereby changing the boundaries of the Monterey-Carmel and Castroville-Pajaro Judicial Districts, effective July 15, 1977, and changing the name of the Castroville-Pajaro Judicial District to the North Monterey County Judicial District, is hereby adopted and ordered published by the following vote, upon motion of Supervisor Church, and seconded by Supervisor Poyner:

AYES: Supervisors Church, Norris, Poyner, and Farr.

NOES: None.

ABSENT: None. Supervisor Petrovic abstains.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 34, on the 10th day of August, 1976, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 10th day of August, 1976.

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 2195

AN ORDINANCE AMENDING ORDINANCE NO. 2139 DIVIDING THE COUNTY OF MONTEREY INTO JUDICIAL DISTRICTS

The Board of Supervisors of the County of Monterey do ordain as follows:

Section 1.

Ordinance No. 2139 passed and adopted January 13, 1976, is amended by amending subdivisions (a) and (c) of Section 2 thereof to read as follows:

(a) The Monterey-Carmel Judicial District is bounded as follows: [metes and bounds description omitted]

(c) The Castroville-Pajaro Judicial District is renamed the North Monterey County Judicial District and is bounded as follows: [metes and bounds description omitted]

Section 2.

This ordinance shall take effect thirty days after its adoption but shall not be operative until July 1, 1977.

PASSED AND ADOPTED this 10th day of August, 1976, by the following vote:

AYES: Supervisors Church, Norris, Poyner, and Farr.
NOES: None.
ABSENT: None. Supervisor Petrovic abstains.

/s/
Chairman of the Board of
Supervisors of Monterey County

ATTEST:
Ernest A. Maggini
Clerk of said Board.
By /s/
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 2212 Adopted, Amending Ordinance No. 2139, Dividing the County of Monterey into Judicial Districts, re: the Naming of the Judicial Districts. . . . .)

Ordinance No 2212, having been introduced and the reading waived on August 17, 1976, and being an ordinance amending Ordinance No. 2139, dividing the County of Monterey into Judicial Districts, re: the naming of the Judicial Districts is hereby adopted and ordered published upon motion of Supervisor Church, and seconded by Supervisor Farr and carried by the following vote, to-wit:

AYES: Supervisors Church, Norris, Poyner, and Farr.
NOES: Supervisor Petrovic
ABSENT: None.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 34, on the 7th day of September, 1976, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 7th day of September, 1976.

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
LINDA MOUNDAY, Deputy

ORDINANCE NO. 2212

AN ORDINANCE AMENDING ORDINANCE NO. 2139 DIVIDING THE COUNTY OF MONTEREY INTO JUDICIAL DISTRICTS

The Board of Supervisors of the County of Monterey do ordain as follows:

SECTION 1.

Ordinance No. 2139, passed and adopted January 13, 1976, dividing the County of Monterey into judicial districts and setting forth the boundaries of said districts is amended effective January 3, 1977, by amending subdivision (a) of Section 2 thereof to read as follows:

(a) The Monterey-Carmel Judicial District is renamed Monterey Peninsula Judicial District and is bounded as follows: [metes and bounds description omitted]

SECTION 2.

Said Ordinance No. 2139 is further amended effective July 1, 1977, by amending said subdivision (a) of said Section 2 thereof to read as follows:

(a) The Monterey Peninsula Judicial District is bounded as follows: [metes and bounds description omitted]

SECTION 3.

Said Ordinance No. 2139 is further amended effective January 3, 1977, by amending subdivision (b) of said Section 2 thereof to read as follows:

(b) The Salinas Judicial District is bounded as follows: [metes and bounds description omitted]

SECTION 4.

Said Ordinance No. 2139 is further amended effective January 3, 1977, by amending subdivision (d) of said Section 2 thereof to read as follows:

(d) The Soledad-Gonzales Judicial District is renamed the Central Judicial District and is bounded as follows: [metes and bounds description omitted]

SECTION 5.

Said Ordinance No. 2139 is further amended effective January 3, 1977, by adding subdivision (e) to Section 2 thereof to read as follows:

(e) The Southern Judicial District is bounded as follows: [metes and bounds description omitted]

PASSED AND ADOPTED this 7th day of September, 1976, by the following vote:

AYES: Supervisor Church, Norris, Poyner, Farr
NOES: Supervisor Petrovic
ABSENT: None

/s/
Chairman of the Board
of Supervisors of
Monterey County

ATTEST:

ERNEST A. MAGGINI
Clerk of Said Board

By /s/
Linda Mounday, Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 2227 Adopted,)
Amending Ordinance Relating to)
the Judicial Districts in)
Monterey County . . . . .)

Ordinance No. 2227, having been introduced and the reading waived on November 2, 1976, and being an ordinance amending Ordinance No. 2212, an ordinance amending No. 2139, dividing the County of Monterey into Judicial Districts, thereby amending the effective date of the previous ordinances to January 2, 1977, is hereby adopted and ordered published by the following vote, upon motion of Supervisor Norris, seconded by Supervisor Petrovic:

AYES: Supervisors Church, Norris, Petrovic, Poyner, and Farr.
NOES: None.
ABSENT: None.

COUNTY OF MONTEREY, }
STATE OF CALIFORNIA. } ss.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 34, on the 9th day of November, 19 76, and now remaining of record in my office.

Witness my hand and the seal of said Board of Supervisors this 9th day of November, 19 76.

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 2227

AN ORDINANCE AMENDING ORDINANCE NO. 2212, AND ORDINANCE AMENDING NO. 2139 DIVIDING THE COUNTY OF MONTEREY INTO JUDICIAL DISTRICTS.

The Board of Supervisors of the County of Monterey do ordain as follows:

SECTION 1.

Ordinance No. 2212, passed and adopted September 7, 1976 which said ordinance amends Ordinance No. 2139 passed and adopted January 13, 1976, and being an ordinance dividing the County of Monterey into Judicial Districts, is amended by amending the first paragraph of Section 1 of said Ordinance No. 2212 to read as follows:

> Ordinance No. 2139, passed and adopted January 13, 1976, dividing the County of Monterey into Judicial Districts and setting forth the boundaries of said districts, is amended effective January 2, 1977, by amending subdivision (a) of Section 2 thereof to read as follows:

SECTION 2.

Said Ordinance No. 2212 is further amended by amending the first paragraph of Section 3 of said Ordinance No. 2212 to read as follows:

> Said Ordinance No. 2139 is further amended effective January 2, 1977, by amending subdivision (b) of said Section 2 thereof to read as follows:

SECTION 3.

Said Ordinance No. 2212 is further amended by amending the first paragraph of Section 4 of said Ordinance No. 2212 to read as follows:

> Said Ordinance No. 2139 is further amended effective January 2, 1977, amending subdivision (d) of said

Section 2 thereof to read as follows:

SECTION 4.

Said Ordinance No. 2212 is further amended by amending the first paragraph of Section 5 of said Ordinance No. 2212 to read as follows:

> Said Ordinance No. 2139 is further amended effective January 2, 1977, by adding subdivision (e) to Section 2 thereof to read as follows:

PASSED AND ADOPTED this 9th day of November, 1976, by the following vote:

AYES: Supervisors Church, Norris, Petrovic, Poyner, and Farr.

NOES: None.

ABSENT: None.

/s/

Chairman of the Board of Supervisors of the County of Monterey

ATTEST:

ERNEST A. MAGGINI
Clerk of Said Board

By /s/
[N. Lukenbill] Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 2524 Adopted,	)
Consolidating Municipal Court	)
Judicial Districts in Monterey	)
County	)

Ordinance No. 2524, having been introduced and the reading waived on May 29, 1979, and being an ordinance consolidating the three municipal courts into one district to be named the Monterey County Municipal Court District effective January 1, 1980, is hereby adopted and ordered published by the following vote, upon motion of Supervisor Shipnuck, seconded by Supervisor Blohm:

AYES: Supervisor Blohm, Shipnuck and Farr.
NOES: Supervisor Petrovic and Moore.
ABSENT: None.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 40, on June 5, 1979.
Dated:

June 5, 1979

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
Deputy.

ORDINANCE NO. 2524

AN ORDINANCE CONSOLIDATING MUNICIPAL COURT JUDICIAL DISTRICTS IN MONTEREY COUNTY

The Monterey County Board of Supervisors ordain as follows:

SECTION 1.

The Monterey Peninsula Judicial District, the North Monterey County Judicial District, and the Salinas Judicial District are consolidated and renamed the Monterey County Municipal Court District, which shall be bounded and described as follows:

Situate in Monterey County, California and being all that portion of said Monterey County lying generally northerly and westerly of the following described line.

SECTION 2

This ordinance shall take effect thirty days after its adoption, but shall not be operative until January 1, 1980.

SECTION 3

It is the intent of this ordinance to consolidate into one district the entire territory of the three existing Municipal Court judicial districts, to wit: Monterey Peninsula, North Monterey County, and Salinas. It is the further intent of this ordinance to make no change in the existing boundary of the Central Judicial District or the Southern Judicial District.

PASSED AND ADOPTED this 5th day of June, 1979, by the following vote:

AYES: Supervisors Blohm, Shipnuck and Farr.
NOES: Supervisor Petrovic and Moore.
ABSENT: None.

Signed: /s/
SAM FARR
Chairman of the Board of
Supervisors of Monterey Count

ATTEST:
Ernest A. Maggini
Clerk of Said Board

By [N. Lukenbill] Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Ordinance No. 2930 Adopted,	)
An Ordinance Amending Chapter 1.08,	)
Monterey County Code by Consolidating	)
All Judicial Districts into Monterey	)
County Municipal Court District	)

A public hearing is held on the matter of the adoption of a proposed amendment to Chapter 1.08 of the Monterey County Code, having been set for this time, due notice of said hearing having been given, and the ordinance having been introduced and the reading waived on July 12, 1983, the matter comes on regularly.

Certain protests having been heard and overruled, Ordinance No. 2930, being an Ordinance amending Chapter 1.08 of the Monterey County Code by consolidating all Judicial Districts into the Monterey County Municipal Court District, is hereby adopted and ordered published, upon motion of Supervisor Del Piero, seconded by Supervisor Shipnuck, and carried by the following vote, to-wit:

AYES: Supervisor Del Piero, Shipnuck, Moore and Peters.

NOES: Supervisor Petrovic.

ABSENT: None.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a full, true and correct copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 50, on August 2, 1983.

Dated:

August 2, 1983

ERNEST A. MAGGINI,
County Clerk and ex-officio Clerk of the Board of Supervisors, County of Monterey, State of California.

By [N. Lukenbill]
Deputy.

Ordinance No. 2930

AN ORDINANCE AMENDING CHAPTER 1.08 OF THE MONTEREY COUNTY CODE BY CONSOLIDATING ALL JUDICIAL DISTRICTS INTO THE MONTEREY COUNTY MUNICIPAL COURT DISTRICT.

The Board of Supervisors of the County of Monterey do ordain as follows:

Section 1. Section 1.08.010 of the Monterey County Code is amended to read as follows:

> Section 1.08.010 Monterey County District The Monterey County Judicial District, the Central Judicial District and the Southern Judicial District are consolidated and renamed the Monterey County Municipal Court District. The boundaries of said district shall be coterminous with the boundaries of the County of Monterey.

Section 2. Section 1.08.020 Monterey County District, Section 1.08.030 Central District and Section 1.08.040 Southern District of the Monterey County Code are hereby repealed.

Section 3. Sections 1 and 2 of this ordinance shall become operative on January 1, 1984.

Section 4. This ordinance shall become effective immediately.

PASSED AND ADOPTED this 2nd day of August, 1983, by the following vote:

AYES: Supervisors Del Piero, Shipnuck, Moore and Peters.

NOES: Supervisors Petrovic.

ABSENT: None.

/s/
Chairman of the Board
of Supervisors of
Monterey County

ATTEST:

ERNEST A. MAGGINI
Clerk of Said Board

By [N. Lukenbill]
Deputy

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No. 88-597 --)
Resolution of the Board of Supervisors)
of the County of Monterey, Authorizing)
a Tenth Judge for the Municipal Court)
for the Purpose of Calculating Trial)
Court Funding Block Grant Under Govern-)
ment Code Section 77202 . . . .)

WHEREAS, the passage of Senate Bill 612, Chapter 945, Statutes of 1988, repealed and added Chapter 13 to Title 8 of the Government code (Section 77000 et seq.), known as the Brown-Presley Trial Court Funding Act of 1988; and

WHEREAS, the passage of Assembly Bill 1197, Chapter 944 Statutes of 1988, appropriated from the State General Fund the sums necessary to provide quarterly block grants to option counties based upon sums specified pursuant to Government Code Section 77200; and

WHEREAS, the provisions of Senate Bill 709, Chapter 1211, Statutes of 1987, authorize nine Municipal Court Judges for the County of Monterey and at such time as the Board of Supervisors finds there are sufficient funds for an additional judge and adopts a Resolution to that effect, authorize ten judges.

NOW, THEREFORE, BE IT RESOLVED that the Monterey County Board of Supervisors finds there is sufficient funding for one Municipal Court judgeship in addition to the nine judges previously authorized provided the State reimburses the County for each Judgeship based upon a rate of $53,000 per Judgeship per quarter, to be adjusted annually as set forth in Chapter 945 of the statutes of 1988.

BE IT FURTHER RESOLVED, in addition to any other rights in the matter the County might have, that if the rate of reimbursement falls below that set forth above, upon a vacancy on the Municipal Court bench, the Board of Supervisors may, by resolution, determine that sufficient funds are not available for the tenth judge and may withdraw the Board's authorization for the tenth judgeship.

PASSED AND ADOPTED on the 13th day of December, 1988, upon motion of Supervisor Petrovic, seconded by Supervisor Shipnuck,, and carried by the following vote, to-wit:

AYES: Supervisors Del Piero, Shipnuck, Petrovic, and Karas.
NOES: None.
ABSENT: Supervisor Strasser Kauffman

HEREBY CERTIFY THAT THE FOREGOING DOCUMENT A TRUE COPY OF THE ORIGINAL ON FILE IN MY OFFICE
DATE January 2, 1996

ERNEST K MORISHITA, CLERK
OF THE BOARD OF SUPERVISORS OF MONTEREY COUNTY CALIF
By [Pamela Olivas] Deputy

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 61, on December 13, 1988
Dated: December 13, 1988

ERNEST K. MORISHITA,
Clerk of the Board of Supervisors,
County of Monterey, State of California.
By [N. Lukenbill]
Deputy.

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(Counsel for Plaintiffs -
Additional Counsel listed on next page)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, Plaintiffs,	)	Civil Action No. C-91-20559-RMW (EAI)
	)	Voting Rights Action Three Judge Court
v.	)	
MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, Defendants,	)	Circuit Judge Mary M. Schroeder District Judge James Ware District Judge Ronald M. Whyte
STEPHEN A. SILLMAN, in his official capacity as Presiding Judge of the Monterey County	)	

Municipal Court District,)
Intervenor.)

FIRST AMENDED COMPLAINT

Additional Counsel for Plaintiffs

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California State Bar Number 85084
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California State Bar Number 172896
Lawyers' Committee for Civil Rights
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Introduction

1. This is a voting rights action filed pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, seeking both declaratory and injunctive relief. Monterey County, California, is a political subdivision subject to the preclearance provisions of Section 5. Under Section 5, a political subdivision such as Monterey County, California, cannot enforce or implement any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to the election of judges for the Monterey County Municipal Court District different from that in force or effect on November 1, 1968, the date of Section 5 coverage for Monterey County, California, unless such change affecting voting has been precleared pursuant to Section 5. A covered political subdivision can secure Section 5 preclearance from either the United States Attorney General or the United States District Court for the District of Columbia. A covered political subdivision can submit the change affecting voting to the United States Attorney General for a determination that such a change affecting voting does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. If the United States Attorney General does not interpose an objection within a 60-day period following the submission of the change affecting voting, the change can be implemented in future elections. 28 C.F.R. § 51.1(a)(2). Alternatively, a covered political subdivision can implement the change affecting voting in future elections if the political subdivision obtains a declaratory judgment from the United States District Court for the District of Columbia that the change affecting voting does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. 28 C.F.R. § 51(a)(1). Until such Section 5 preclearance is secured, the change affecting voting cannot be implemented or enforced in any elections. 28 C.F.R. § 51.10.

2. This First Amended Complaint alleges that applicable Monterey County Ordinances, as well as, an applicable Monterey County Resolution, all of which resulted in the consolidation of municipal and justice court districts in Monterey County and modified the method of electing judges to the Monterey County Municipal Court District cannot be implemented in any elections for municipal court judges in Monterey County until such ordinances and resolution, have been submitted for Section 5 preclearance to the United States Attorney General and no objection has been interposed within a sixty-day period from the submission of the ordinances and the Monterey County Resolution.

3. This First Amended Complaint alleges that applicable Monterey County Ordinances and an applicable Monterey County Resolution, all of which resulted in consolidated municipal and justice court districts in Monterey County and modified the method of electing judges to the Monterey County Municipal Court District cannot be implemented in any elections for municipal court judges in Monterey County until Monterey County has obtained a declaratory judgment from the United States District Court for the District of Columbia determining that the ordinances, and the Monterey County Resolution do not have t' e purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group.

4. This First Amended Complaint further alleges that applicable Monterey County Ordinances and an applicable Monterey County Resolution, all of which resulted in consolidated municipal and justice court districts in Monterey County and modified the method of electing judges to the Monterey County Municipal Court District have not secured the requisite Section 5 preclearance.

5. Plaintiffs seek an Order from this Court permanently enjoining the enforcement or implementation of these County

Ordinances and the Monterey County Resolution, until the requisite Section 5 preclearance is secured. If such preclearance is not forthcoming, Plaintiffs will seek as a remedy the implementation of either a Section 5 precleared election plan for the selection of judges to the Monterey County Municipal Court District or a court ordered election plan which incorporates Section 5 standards and does not fragment or over concentrate language, racial and ethnic minority communities of interest nor deny racial and ethnic minority voters an equal opportunity to participate in the political process and elect candidates of their choice in accordance with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. Plaintiffs will also seek an Order against Defendant State of California enjoining any applicable provisions of the California Constitution and state statutes to the extent that such constitutional and statutory provisions prevent the implementation of an election plan for judges to the Monterey County Municipal Court District which either secures preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, or which incorporates Section 5 standards and does not fragment or over concentrate language, racial and ethnic minority communities of interest nor deny racial and ethnic minority voters an equal opportunity to participate in the political process and elect candidates of their choice in accordance with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. Plaintiffs will also seek in conjunction with the implementation of any temporary or permanent Section 5 precleared election plan or a court ordered election plan which incorporat Section 5 and Section 2 standards, an Order shortening e terms for judges of the Monterey County Municipal Court District and ordering any special elections for electing judges to the Monterey County Municipal Court District.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 1973c, 28 U.S.C. §§ 1343(3) & (4), and 28 U.S.C.

§ 2201.

PARTIES

7. Plaintiffs VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, are citizens of the United States, and are registered voters residing in Monterey County, California.

8. Defendant MONTEREY COUNTY, CALIFORNIA, is a governmental entity organized pursuant to the laws of the State of California. Defendant MONTEREY COUNTY, CALIFORNIA, is a political subdivision subject to the requirements of Section 5 of the Voting Rights Act. 42 U.S.C. § 1973 c. All voting qualifications or prerequisites to voting, or standards, practices, or procedures with respect to voting enacted, adopted, or implemented by Monterey County on or after November 1, 1968, must be precleared pursuant to Section 5 of the Voting Rights Act. 42 U.S.C. § 1973 c.

9. Defendant STATE OF CALIFORNIA is a governmental entity organized pursuant to the laws of the State of California.

10. Intervenor STEPHEN A. SILLMAN has intervened in his official capacity as Presiding Judge of the Monterey County Municipal Court District. Intervenor SILLMAN, as Presiding Judge, is responsible for apportioning the business of the court and the cases among the municipal court departments. Cal. Gov. Code § 72274. Intervenor SILLMAN has stated an interest in the method of electing judges to the Monterey County Municipal Court District. Intervenor SILLMAN has opposed the method of electing municipal court judges sought by the Plaintiffs.

FACTS

11. Pursuant to Cal. Gov. Code §§ 25200 and 71040, the Monterey County Board of Supervisors has the authority to modify and consolidate municipal and justice court districts.

12. On March 30, 1964, the Monterey County Board of Supervisors passed and adopted Ordinance No. 1347.

13. Monterey County Ordinance No. 1347 abolished the Bradley, Cholame, Peachtree, San Antonio and San Ardo Judicial Townships and defined the boundaries of the following judicial districts: 1) Salinas Judicial District (a municipal court); 2) Monterey-Carmel Judicial District (a municipal court); 3) Pajaro Judicial District (a justice court); 4) Castroville Judicial District (a justice court); 5) Pacific Grove Judicial District (a justice court); 6) Gonzales Judicial District (a justice court); 7) Soledad Judicial District (a justice court); 8) Greenfield Judicial District (a justice court); 9) King City Judicial District (a justice court); 10) San Ardo Judicial District (a justice court). As a result of Monterey County Ordinance No. 1347, there were two municipal courts and eight justice courts.

14. On March 26, 1968, the Monterey County Board of Supervisors passed and adopted Ordinance No. 1597.

15. Monterey County Ordinance No. 1597 combined the Castroville and the Pajaro Judicial Districts (justice courts) into one consolidated judicial district: the Castroville-Pajaro Judicial District (a justice court). As a result of Monterey County Ordinance No. 1597, there were two municipal courts and seven justice courts.

16. On March 11, 1969, the Monterey County Board of Supervisors passed and adopted Ordinance No. 1654.

17. Monterey County Ordinance No. 1654 modified the boundaries of the Salinas Judicial District (a municipal court), the Monterey-Carmel Judicial District (a municipal court), and the Castroville-Pajaro Judicial District (a justice court). As a result of Monterey County Ordinance No. 1654, the number of judicial districts remained at two municipal courts and seven justice courts.

18. On February 1, 1972, the Monterey County Board of Supervisors passed and adopted Ordinance No. 1852.

19. Monterey County Ordinance No. 1852 amended the boundaries of the Salinas Judicial District (a municipal court), the Monterey-Carmel Judicial District (a municipal court), the Castroville-Pajaro Judicial District (a justice court), the Gonzales Judicial District (a justice court), the Soledad Judicial District (a justice court), the Greenfield Judicial District (a justice court), the King City Judicial District (a justice court), the San Ardo Judicial District (a justice court), and confined the Pacific Grove Judicial District (a justice court) to the corporate boundaries of the City of Pacific Grove. As a result of Monterey County Ordinance No. 1852, the number of judicial districts remained at two municipal courts and seven justice courts.

20. On October 3, 1972, the Monterey County Board of Supervisors passed and adopted Ordinance No. 1917.

21. Monterey County Ordinance No. 1917 combined the Soledad Judicial District with the Gonzales Judicial District (justice courts) into one consolidated judicial district: the Soledad-Gonzales Judicial District (a justice court). As a result of Monterey County Ordinance No. 1917, there were two municipal courts and six justice courts.

22. On November 13, 1973, the Monterey County Board of Supervisors passed and adopted Ordinance No. 1999.

23. Monterey County Ordinance No. 1999 combined the King City Judicial District with the Greenfield Judicial District (justice courts) into one consolidated judicial district: the King City-Greenfield Judicial District (a justice court). As a result of Monterey County Ordinance No. 1999, there were two municipal courts and five justice courts.

24. On January 13, 1976, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2138.

25. Monterey County Ordinance No. 2138 adjusted the boundaries of the Salinas Judicial District (a municipal court), the Monterey-Carmel Judicial District (a municipal court), and the Castroville-Pajaro Judicial District (a justice court). As a result of Monterey County Ordinance No. 2138, the number of judicial districts remained at two municipal courts and five justice courts.

26. On January 13, 1976, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2139. Monterey County Ordinance No. 2139 did not become operative until January 2, 1977.

27. Monterey County Ordinance No. 2139 adjusted the boundaries of the Monterey-Carmel Judicial District (a municipal court), the Salinas Judicial District (a municipal court), the Castroville-Pajaro Judicial District (a justice court), and the Soledad-Gonzales Judicial District (a justice court). Monterey County Ordinance No. 2139 consolidated the Pacific Grove Judicial District (a justice court) into the Monterey-Carmel Judicial District (a municipal court). Monterey County Ordinance No. 2139 consolidated the King City-Greenfield Judicial District (a justice court), and San Ardo Judicial District (a justice court) into the Salinas Judicial district (a municipal court). As a result of Monterey County Ordinance No. 2139, there were two municipal court districts and two justice courts: the Salinas Judicial District (a municipal court); the Monterey-

Carmel Judicial District (a municipal court); the Castroville-Pajaro Judicial District (a justice court); and the Soledad-Gonzales Judicial District (a justice court).

28. On August 10, 1976, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2195. Monterey County Ordinance No. 2195 did not become operative until July 1, 1977.

29. Monterey County Ordinance No. 2195 renamed the Castroville-Pajaro Judicial District (a justice court) to the North Monterey County Judicial District (a justice court). Monterey County Ordinance No. 2195 also revised the boundaries of the North Monterey County Judicial District (a justice court) and the Monterey-Carmel Judicial District (a municipal court). As a result of Monterey County Ordinance No. 2195, the number of judicial districts remained at two municipal courts and two justice courts.

30. On September 7, 1976, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2212.

31. Monterey County Ordinance No. 2212 amended Monterey County Ordinance No. 2139, which was adopted and passed by the Monterey County Board of Supervisors on January 13, 1976.

32. Section 1 of Monterey County Ordinance No. 2212, by amending Monterey County Ordinance No. 2139, renamed the Monterey-Carmel Judicial District (a municipal court) to the Monterey Peninsula Judicial District (a municipal court). Section 1 of Monterey County Ordinance No. 2212 adjusted the boundaries of the Monterey Peninsula Judicial District. Section 1 of Monterey County Ordinance No. 2212 did not become effective until January 3, 1977.

33. Section 2 of Monterey County Ordinance No. 2212, by

amending Monterey County Ordinance No. 2139, adjusted the boundaries of the Monterey Peninsula Judicial District. Section 2 of Monterey County Ordinance No. 2212 did not become effective until July 1, 1977.

34. Section 3 of Monterey County Ordinance No. 2212, by amending Monterey County Ordinance No. 2139, adjusted the boundaries of the Salinas Judicial District. Section 3 of Monterey County Ordinance No. 2212 did not become effective until January 3, 1977.

35. Section 4 of Monterey County Ordinance No. 2212, by amending Monterey County Ordinance No. 2139, renamed the Soledad-Gonzales Judicial District (a justice court) to the Central Judicial District (a justice court). Section 4 of Monterey County Ordinance No. 2212 adjusted the boundaries of the Central Judicial District (a justice court). Section 4 of Monterey County Ordinance No. 2212 did not become effective until January 3, 1977.

36. Section 5 of Monterey County Ordinance No. 2212, by amending Monterey County Ordinance No. 2139, established the Southern Judicial District (a justice court). Section 5 of Monterey County Ordinance No. 2212 did not become effective until January 3, 1977.

37. As a result of Monterey County Ordinance No. 2212, there were two municipal court districts (Salinas Judicial District; Monterey Peninsula Judicial District) and three justice courts (North Monterey County Judicial District; Central Judicial District; Southern Judicial District).

38. On November 9, 1976, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2227.

39. Monterey County Ordinance No. 2227 amended the effective dates of the following sections of Monterey County

Ordinance No. 2212: the effective date of Section 1 of Monterey County Ordinance No. 2212 was amended from January 3, 1977, to January 2, 1977; the effective date of Section 3 of Monterey County Ordinance No. 2212 was amended from January 3, 1977, to January 2, 1977; the effective date of Section 4 of Monterey County Ordinance No. 2212 was amended from January 3, 1977, to January 2, 1977; and the effective date of Section 5 of Monterey County Ordinance No. 2212 was amended from January 3, 1977, to January 2, 1977.

40. On June 5, 1979, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2524. Monterey County Ordinance No. 2524 did not become operative until January 1, 1980.

41. Monterey County Ordinance No. 2524 consolidated the Monterey Peninsula Judicial District (a municipal court), the North Monterey County Judicial District (a municipal court), and the Salinas Judicial District (a municipal court) into the Monterey County Municipal Court District. Monterey County Ordinance No. 2524 established the boundaries for the Monterey County Municipal Court District.

42. On August 2, 1983, the Monterey County Board of Supervisors passed and adopted Ordinance No. 2930.

43. Monterey County Ordinance No. 2930 consolidated the Central Judicial District (a justice court) and the Southern Judicial District (a justice court) with the Monterey County Municipal Court (a municipal court). As a result of Monterey County Ordinance No. 2930, there was one county wide municipal court, which was renamed the Monterey County Municipal Court District.

44. On December 13, 1988, the Monterey County Board of Supervisors passed and adopted Resolution No. 88-597.

45. Monterey County Resolution No. 88-597 created a tenth municipal court judgeship in Monterey County.

46. Monterey County Ordinances Nos. 1654,1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Monterey County Resolution No. 88-597, are voting qualifications, or prerequisites to voting, standards, practices, or procedures with respect to voting different from those in force or effect on November 1, 1968. Defendant MONTEREY COUNTY, CALIFORNIA, must submit these Monterey County Ordinances and the Resolution to the United States Attorney General for a determination that these ordinances and the resolution do not have the purpose and do not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Alternatively, Defendant MONTEREY COUNTY, CALIFORNIA, must file an action in the United States District Court for the District of Columbia seeking a declaratory judgment that these Monterey County Ordinances and the Resolution do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. 42 U.S.C. § 1973 c.

47. Defendant MONTEREY COUNTY, CALIFORNIA, has not secured the requisite determination pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, from either the United States Attorney General or the United States District Court for the District of Columbia that Monterey County Ordinances Nos. 1654, 1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Monterey County Resolution No. 88-597, do not have the purpose and do not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

48. Notwithstanding the lack of preclearance as required by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c,

Defendant MONTEREY COUNTY, CALIFORNIA, has implemented Monterey County Ordinances Nos. 1654, 1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Resolution No. 88-597.

49. On April 13, 1995, this Court granted PRESIDING JUDGE STEPHEN A. SILLMAN'S motion to intervene in his official capacity stating that the PRESIDING JUDGE was "seeking to protect the administration of justice in Monterey County, a concern independent from an interest in the configuration of particular districts."

50. Since the intervention was granted, Intervenor SILLMAN has requested the implementation of a method of electing judges to the Monterey County Municipal Court District which is opposed by the Plaintiffs. The method of electing judges to the Monterey County Municipal Court District requested by Intervenor Sillman is the result of the implementation of the Monterey County Resolution and Monterey County Ordinances, specified in paragraph 46 of Plaintiffs' First Amended Complaint. These Ordinances and Resolution have not received preclearance as required by Section 5 of the Voting Rights Act.

51. On November 1, 1995, this Court ordered the STATE OF CALIFORNIA to be joined as a party defendant. The Court joined the STATE OF CALIFORNIA as a party defendant "in order to bring about a complete resolution of the issues."

52. Defendant STATE OF CALIFORNIA will enforce applicable state constitutional and statutory provisions which will prevent the implementation of a method of electing judges to the Monterey County Municipal Court District which can secure preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Alternatively, Defendant STATE OF CALIFORNIA will enforce applicable state constitutional and

statutory provisions which will prevent the implementation of a temporary or permanent court-ordered election for electing judges to the Monterey County Municipal Court District which complies with the standards developed by the United States Attorney General in Section 5 administrative proceedings and by the United States District Court for the District of Columbia in declaratory judgment actions filed pursuant to Section 5, and which complies with the standards of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by not fragmenting or over concentrating language, racial and ethnic minority communities of interest and denying racial and ethnic minority voters of an equal opportunity to participate in the political process and elect candidates of their choice.

REQUEST FOR THREE JUDGE COURT

53. Pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, the convening of a Three Judge Court is requested.

CLAIM FOR RELIEF

54. Plaintiffs reallege paragraphs 1 through 54 above and incorporate the same as though fully set forth herein.

55. Plaintiffs allege that the adopted and implemented changes in the method of electing judges to the municipal and justice courts in Monterey County and to the consolidation of the judicial districts as specified in Monterey County Ordinances Nos. 1654, 1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Resolution No. 88-597, constitute voting qualifications, or prerequisites to voting, or standards, practices, or procedures with respect to voting different from those in force or effect on November 1, 1968, in Monterey County, within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c.

56. Plaintiffs allege that the failure of Defendant MONTEREY COUNTY, CALIFORNIA, to secure a determination from either the United States Attorney General or the United States District Court for the District of Columbia that Monterey County Ordinances Nos. 1654, 1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Resolution No. 88-597, do not have the purpose and do not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, constitutes a violation of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c.

57. Plaintiffs allege that the failure of Defendant MONTEREY COUNTY, CALIFORNIA, to secure a determination from either the United States Attorney General or the United States District Court for the District of Columbia that Monterey County Ordinances Nos. 1654, 1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Resolution No. 88-597, do not have the purpose and do not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, renders the implementation of these Monterey County Ordinances, and the Monterey County Resolution legally unenforceable.

58. Plaintiffs allege that Defendant STATE OF CALIFORNIA will enforce applicable state constitutional and statutory provisions, unless the enforcement of such constitutional and statutory provisions are enjoined by this Court, which will prevent the implementation of a method of electing judges to the Monterey County Municipal Court District which can secure preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

59. Plaintiffs allege that Defendant STATE OF CALIFORNIA will enforce applicable state constitutional and statutory provisions, unless the enforcement of such

constitutional and statutory provisions are enjoined by this Court, which will prevent the implementation of a temporary or permanent court-ordered election plan for electing judges to the Monterey County Municipal Court District which complies with the standards developed by the United States Attorney General in Section 5 administrative proceedings and by the United States District Court for the District of Columbia in declaratory judgment actions filed pursuant to Section 5, and which complies with the standards of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by not fragmenting or over concentrating language, racial and ethnic minority communities of interest and denying racial and ethnic minority voters of an equal opportunity to participate in the political process and elect candidates of their choice.

INJUNCTIVE AND DECLARATORY RELIEF

60. Plaintiffs reallege paragraphs 1 through 59 above and incorporate the same as though fully set forth herein.

61. This is also an action for declaratory, preliminary and permanent injunctive relief sought pursuant to 28 U.S.C. §§ 2201 and 2202, and Fed.R.Civ.P. 57 and 65. Plaintiffs seek a declaration that the failure of Defendant MONTEREY COUNTY, CALIFORNIA, to secure a determination from either the United States Attorney General or the United States District Court for the District of Columbia that Monterey County Ordinances Nos. 1654, 1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Resolution No. 88-597, do not have the purpose and do not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, violate the protections afforded to Plaintiffs by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, thereby making injunctive relief appropriate. Unless enjoined, Defendant MONTEREY COUNTY, CALIFORNIA, will continue with the enforcement

and implementation of the legally unenforceable changes affecting the voting rights of language, racial, and ethnic minority groups residing in Monterey County, California.

62. Plaintiffs seek a declaration that the enforcement of applicable state constitutional and statutory provisions by Defendants STATE OF CALIFORNIA and MONTEREY COUNTY, CALIFORNIA, which will prevent the implementation of a judicial election plan for the Monterey County Municipal Court District that secures preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, or prevent the implementation of a court-ordered judicial election plan for the Monterey County Municipal Court District, which incorporates standards developed by the United States Attorney General in Section 5 administrative proceedings and by the United States District Court for the District of Columbia in declaratory judgment actions filed pursuant to Section 5, and which complies with the standards of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by not fragmenting or over concentrating language, racial and ethnic minority communities of interest and denying racial and ethnic minority voters of an equal opportunity to participate in the political process and elect candidates of their choice, will violate the protections afforded to Plaintiffs by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, thereby making injunctive relief appropriate. Unless enjoined, Defendants STATE OF CALIFORNIA and MONTEREY COUNTY, CALIFORNIA, will continue to enforce and implement these applicable state constitutional and statutory provisions, thereby violating the protections afforded to Plaintiffs by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c.

BASIS FOR EQUITABLE RELIEF

63. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for declaratory and injunctive relief is their only means of securing

adequate redress from the unlawful practices of Defendants MONTEREY COUNTY, CALIFORNIA, and the STATE OF CALIFORNIA. Plaintiffs will continue to suffer irreparable injury from the acts, policies, and practices of Defendants MONTEREY COUNTY, CALIFORNIA, and the STATE OF CALIFORNIA set forth herein unless enjoined by this Court.

PRAYER

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment granting Plaintiffs:

a. A declaration that the adoption and implementation of Monterey County Ordinances Nos. 1654, 1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Resolution No. 88-597, constitute changes affecting voting within the meaning of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, and are legally unenforceable absent the requisite Section 5 preclearance;

b. A permanent injunction restraining and enjoining Defendant MONTEREY COUNTY, CALIFORNIA, its officers, agents, employees, attorneys and successors in office and all other persons in active concert and participation with it, from any further implementation or enforcement of Monterey County Ordinances Nos. 1654, 1852, 1917, 1999, 2138, 2139, 2195, 2212, 2227, 2524, 2930, and Resolution No. 88-597, unless and until said changes affecting voting are precleared pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c;

c. A declaration that the enforcement of applicable state constitutional and statutory provisions by Defendants STATE OF CALIFORNIA and MONTEREY COUNTY, CALIFORNIA, that prevent the implementation of a judicial election plan for the Monterey County Municipal Court District that secures preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, or prevent the implementation

of a court-ordered judicial election plan for the Monterey County Municipal Court District, which incorporate standards developed by the United States Attorney General in Section 5 administrative proceedings and by the United States District Court for the District of Columbia in declaratory judgment actions filed pursuant to Section 5, and which complies with the standards of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by not fragmenting or over concentrating language, racial and ethnic minority communities of interest and denying racial and ethnic minority voters of an equal opportunity to participate in the political process and elect candidates of their choice, violate the protections afforded to Plaintiffs by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

d. An Order, in the event the requisite preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, is not secured, shortening the terms of the judges of the Monterey County Municipal Court District and requiring a special election for the judges of the Monterey County Municipal Court District, said election based upon the judicial election districts in existence on November 1, 1968, or based upon an election plan which has received the requisite preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c; or alternatively,

e. An Order, in the event the requisite preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, is not secured, requiring the implementation of a court-ordered temporary and permanent election plan for the election of judges to the Monterey County Municipal Court District, said plan to comply with the standards developed by the United States Attorney General in Section 5 administrative proceedings and by the United States District Court for the District of Columbia in declaratory judgment actions filed pursuant to Section 5, and to comply with the standards of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by not fragmenting or over concentrating language, racial and ethnic

minority communities of interest and denying racial and ethnic minority voters of an equal opportunity to participate in the political process and elect candidates of their choice;

f. An Order enjoining Defendants STATE OF CALIFORNIA and MONTEREY COUNTY, CALIFORNIA from enforcing applicable state constitutional and statutory provisions which will prevent the implementation of a judicial election plan for the Monterey County Municipal Court District that secures preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973 c, or prevent the implementation of a court-ordered judicial election plan for the Monterey County Municipal Court District, which incorporates standards developed by the United States Attorney General in Section 5 administrative proceedings and by the United States District Court for the District of Columbia in declaratory judgment actions filed pursuant to Section 5, and which complies with the standards of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by not fragmenting or over concentrating language, racial and ethnic minority communities of interest and denying racial and ethnic minority voters of an equal opportunity to participate in the political process and elect candidates of their choice.

g. An Order granting Plaintiffs their costs of court, necessary litigation expenses, and reasonable attorneys' fees to be adjudged against the Defendants as provided for under 42 U.S.C. §§ 1973 l (e) and 1988;

h. An Order retaining jurisdiction to render such further and additional Orders as the Court may, from time to time, deem appropriate; and

i. An Order granting such other additional relief at law or in equity as may be deemed appropriate.

DATED: October 24, 1996

JOAQUIN G. AVILA
BARBARA Y. PHILLIPS
ROBERT RUBIN
NANCY M. STUART

By: /s/
JOAQUIN G. AVILA
Attorney for Plaintiffs

ISABELLE KATZ PINZLER
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Chief, Civil Division
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San Jose, California 95113
Telephone: (408) 535-5056

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA,
Plaintiffs,

v.

MONTEREY COUNTY, CALIFORNIA,	)	Civil Action No. C-91-20559-RMW (EAI) (Voting Rights Action Three Judge Court)
Defendant,	)	
STATE OF CALIFORNIA,	)	
Defendant-Intervenor,	)	

DECLARATION OF GEORGE SCHNEIDER, ACTING DEPUTY CHIEF VOTING RIGHTS SECTION, CIVIL RIGHTS DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

I, George Schneider, Acting Deputy Chief of the Voting Section, Civil Rights Division, United States Department of Justice, make the following declaration pursuant to 28 U.S.C. 1746.

1. My duties as Acting Deputy Chief of the Voting Section include supervisorial authority over the review of voting changes submitted to the Attorney General under Section 5 of the Voting Rights act of 1965, 42 U.S.C. 1973c.

2. Counsel for Plaintiffs in the above-captioned case requested the Voting Section to verify the status, under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of voting changes occasioned by eight California state statutes: Chapter 966 (1975), Chapter 1242 (1975), Chapter 995 (1977), Chapter 694 (1979), chapter 1249 (1983), Chapter 659 (1985), Chapter 1211 (1987), and Chapter 608 (1989).

3. A search of our records fails to show that voting changes occasioned by Chapter 966 (1975), Chapter 1242 (1975), Chapter 995 (1977), Chapter 694 (1979), or Chapter 1211 (1987), have been submitted for Section 5 preclearance.

4. Because counsel for Plaintiffs indicate that the voting changes occasioned by Chapter 966 (1975) and Chapter 1242 (1975) may have received Section 5 preclearance by letter dated March 8, 1976, I am attaching to this declaration a March 8, 1976 letter from J. Stanley Pottinger, Assistant Attorney General, to Mr. William Burley, Assistant to the California Secretary of State, which preclears the voting changes occasioned by numerous California state statutes submitted by the State of California to the Attorney General on January 8, 1976. See Attachment A. I am also attaching to this declaration a list reflecting the Chapter number and year of 329 state statutes submitted by the State of California by letter dated January 5, 1976, and received by the Department of Justice on January 8, 1976. See Attachment B. This list was provided by the State of California in its January 1976 submission, and accurately reflects the state statutes referenced in the March 8, 1976 letter. As is reflected by this list, Chapter 966 (1975) and Chapter 1242 (1975) were not included in the January 1976 submission, and therefore were not precleared on March 8, 1976.

5. A search of our records indicates that the voting changes occasioned by Chapter 1249 (1983) were submitted by the State of California for Section 5 review by letter dated December 13, 1983, and precleared on December 28, 1984. Our letter of preclearance is attached as Attachment C.

6. A search of our records indicates that the voting changes occasioned by Chapter 659 (1985) were submitted by the State of California for Section 5 review by letter dated December 24, 1985, and precleared on February 28, 1986. Our letter of preclearance is attached as Attachment D.

7. A search of our records indicates that the voting changes occasioned by Chapter 608 (1989) were submitted by the State of California for Section 5 review by letter dated January 2, 1990. Since the change affected by Chapter 608 was related to other changes not yet submitted, the Attorney General made no determination with regard to the submission of Chapter 608 (1989). Our letter of no determination is

attached as Attachment E.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on this 15th day of December, 1997.

/s/
GEORGE SCHNEIDER
Acting Deputy Chief
Voting Section
Civil Rights Division
Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128

JSP:MHC:SKD:bhj
D.J. 166-012-3
X1300-X1628

Mr. William N. Durley
Assistant to the Secretary of State
Election Division
Office of the Secretary of State
111 Capitol Mall
Sacramento, California 95814

Dear Mr. Durley:

This is in reference to the submission of 329 Acts of the State of California to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on January 8, 1976.

The Acts which you have submitted were set forth on the attachments to your letter. With the exception of the Acts listed below, the Attorney General does not interpose an objection to the Acts which you have submitted. Some of the Acts which you have submitted, such as Act 488 (1973) which authorizes cities to enact an ordinance to fill vacancies on the city council, are enabling legislation which authorize local jurisdictions to make changes in voting procedures as the local jurisdictions desire. While this enabling legislation is subject to the submission requirements of Section 5, and while the Attorney General has not interposed an objection to these state Acts, Section 5 also imposes an obligation on the local jurisdiction to submit all changes, for Section 5 review, made as a result of the implementation of procedures which are authorized by these Acts.

ATTACHMENT A

I note that several Acts, such as Act 565 (1973) and 1093 (1969) deal with providing certain materials in Spanish and that other acts deal with forms, etc., which are used in the election process. The Attorney General does not consider your submission of January 8, 1976 as being a submission of any aspect of the change to bilingual procedures for elections, as required for four covered counties by the 1975 Amendments to the Voting Rights Act of 1965. It appears that your submission does not purport to include the changes to bilingual elections. Consequently, the failure to object to these Acts by the Attorney General should not be considered to be a failure to object to any changes in election procedures relating to bilingual election matters.

We feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the change involved.

With respect to the Acts on the attached list, however, after a preliminary review the Attorney General has determined that the information provided is not sufficient to enable him to make the determination which is required by Section 5. See Section 51.18 of the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, a copy of which is enclosed for your convenience. To aid us in making the required determination, would you please provide us with the information requested for each Act enumerated on the attachment.

The Attorney General has a 60-day period to consider enactments submitted pursuant to Section 5. This time will begin to run with regard to the Acts on the attachment when the Department has available to it all the information necessary to evaluate each of these changes.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

ATTACHMENT

1. Chapter 1316 (1969): Does the Act apply to Yuba or Monterey Counties? If so, please explain what change has occurred and contrast the old and new procedures or law.

2. Chapter 1317 (1969): Does the Act or change apply to Yuba or Monterey Counties? If so, please explain the changes which have occurred and contrast the old and new procedures or law.

3. Chapter 320 (1970): The Change is not discernible from the act or the analysis you provided. Please explain the old procedure and contrast it with the new.

4. Chapter 1249 (1970): This lengthly Act appears to contain many provisions which do not affect voting. Please set forth and explain the specific changes which affect voting and contrast the old and new provisions.

5. Chapter 2 (1971): This lengthly Act appears to contain many provisions which do not affect voting. Please set forth and explain the specific changes which affect voting and contrast the old and new provisions.

6. Chapter 1298 (1971): Please explain whether the change providing Spanish translations of qualification statements has been implemented, and if so, who has born the cost of such translations. Is this statute still the operable law governing this matter?

7. Chapter 1821 (1971): This Act refers to the 1972 Democratic Presidential Primary, but does not appear to amend or change existing statutes. What changes in voting practice and procedures are affected by the enactment of this statute? Please contrast the old and

the new procedures.

8. Chapter 16 (1972): Please explain the change and indicate the difference between the change and the previous provision.

9. Chapter 320 (1972): Please explain and clarify the purpose of the change. Does the Act purport to provide a less stringent residency requirement?

10. Chapter 228 (1972): The changes are not discernible from the Act or analysis. For each change contained in this Act, please explain the old and new practice, law, or procedure. Is the Act enabling legislation, and if so, have Monterey or Yuba Counties implemented its provisions?

11. Chapter 340 (1972): The change affecting voting is not discernible from the Act or analysis. Please explain the old procedures contrast it with the new.

12. Chapter 409 (1972): What specific changes affecting voting are occassioned by this Act? Please explain the old and new procedures.

13. Chapter 445 (1972): Does this Act apply to Monterey or Yuba Counties? If so, please explain the change or changes affecting voting.

14. Chapter 471 (1972): Does this Act apply to Monterey or Yuba Counties? If so, please explain its change or changes affecting voting.

15. Chapter 1356 (1972): State the past practice with respect to late registrants, i.e., those persons registering within 54 days prior to an election by describing what election materials were sent and those which were not

sent to them;

Explain or give the justification for the provision embodied in Chapter 1356 (1972) that late registrants need not be sent a copy of the sample ballot or a statement of a candidate's qualifications although they are required to be sent a notice of polling places and the state ballot pamphlet.

State what representatives of racial and language minority groups have been contacted with respect to this change and what their views are concerning the purpose and effect of the change within the meaning of Section 5 of the Voting Rights Act of 1965 as amended.

16. Chapter 1041 (1973): Your submission did not include a copy of the Act, although a copy of the Legislative Counsel's Digest was provided. Please provide us with a copy of the Act (Chapter 1041) and indicate the nature of the change from existing law.

17. Chapter 270 (1975): Please provide a statement of the racial population of the Cordua Irrigation District and a statement of the reason for the change, i.e., limiting the right to vote in irrigation district elections to landowners.

Also, please provide a statement as to whether registered voters residing within the district could petition to change from a landowner voting district to that of a resident voting district and, if so, under what conditions.

18. Chapter 1030 (1975): A statement as to whether this statute requires that municipal officers, to the extent that they are elected at-large, reside within particular districts with the city.

19. Chapter 1048 and 1111 (1975): An explanation of the difference between the submitted changes and the past practice of selecting delegates to the state Democratic and Republican conventions.

An explanation as to how the submitted changes will affect racial and language minorities in the four covered counties within the meaning of Section 5, e.g., in terms of their participation in the selection process, their representation at the convention.

A statement of the reason for the changes and the views of racial and language minorities with respect to the changes.

20. Chapter 1056 and 1060 (1975): An explanation of the difference between the submitted change and the past practice concerning third parties and their conventions.

An explanation as to how the submitted changes will affect racial and language minorities in the four covered counties within the meaning of Section 5.

A statement of the reason for the changes and the views of racial and language minorities with respect to the changes.

21. Chapter 1158 (1975): Please indicate if any translation of the candidate's statement into the applicable minority languages as defined by the 1975 Amendments to the Voting Rights Act of 1965, in addition to the official statement which is contained in the voter's pamphlet, is being provided for those minority language voters who need it, when a candidate elects not to have his or her statement translated and distributed as part of the voter's pamphlet. If so, please indicate the steps and procedures which have been or which will be

implemented to assure that the method of distribution which will be utilized for the translated statements will effectively make the translated statements available to the minority language voters who need them. In this regard, please indicate the extent to which representatives of the minority language groups have been consulted in order to determine if the method of proposed distribution will reach minority language voters who need the translated versions of the candidates' statements. Please indicate the name, address, and telephone number for each minority language group representative contacted and his or her reaction to the alternate plan of distribution, if any.

Also, with regard to the candidates' statements which are translated and printed in a minority language in the voter's pamphlet, please indicate if a greater cost will be levied or assessed on those candidates who elect to have their statement translated than those candidates who do not so elect. If a greater cost is to be levied, please indicate the statutory basis fro the additional cost and the estimated additional cost for a candidate in each of the four counties covered by the 1975 Amendments to the Voting Rights Act of 1965 for the 1975 elections.

22. Chapter 1203 (1975): A copy of the reapportionment plan adopted by the California Supreme Court in Legislature v. Reinecke, 10 Cal. 396; map(s) showing the old and the new districts and population statistics by race before and after the change.

Any other changes affecting voting made pursuant to this statute are subject to Section 5 preclearance, e.g., increase/decrease in the number of precincts.

Seal of the
State of California

Office of the Secretary of State
March Fong Eu

TABLE OF CONTENTS

ATTACHMENT B

I. MASTER LIST OF CHAPTERED LAW NUMBERS

1969	1970	1971	1972	1973	1974	1975
1	36Ext.	S.2*	14	1	27	17
75	81Ext.	S.3*	16	23	57	21
106	147	49	17	79	68	23
151	148	65	37	156	74	45
159	164	74	108	226	109	49
160	169	75	113	236	154	52
170	186	85	122	271	158	64
256	236	127	145	305	224	103
367	256	128	157	333	230	107
402	267	129	159	337	233	142
438	294	135	169	352	293	145
453	320	166	172	359	324	151
454	341	294	193	363	329	206
455	342	325	199	364	337	238
461	343	364	209	384	376	250
467	379	365	213	385	404	260
497	393	367	218	403	431	270
511	489	412	228	413	454	276
557	559		229	415	469	283
575	592	465	230	421	546	333
607	615	486	238	422	641	399
679	632	556	243	432	662	455
774	726	643	288	444	681	486
779	781	650	320	488	691	490
781	789	691	327	492	762	510
783	845	707	340	513	777	544
810	859	724	385	514	848	605
835	1153	737	404	525	858	620
870	1249	819	409	531	907	652
913	1387	978	413	547	945	696
914	1472	994	426	631	979	704
939		1063	445	643	1001	797
940		1093	453	648	1105	817

948	1146	464	683	1131	830
1151	1180	467	800	1135	882
1160	1190	471	834	1157	884
1225	1218	491	840	1165	915
1316	1219	499	885	1166	920
1317	1274	514	934	1184	955
1383	1294	570	1041	1189	981
1469	1298	579	1125	1203	1030
1470	1453	592	1164	1244	1045
1520	1479	593	1177	1386	1048
1543	1572	618	1186	1389	1056
1556	1760	652	1196	1410	1060
	1775	777		1445	1079
	1821	818		1494	1097
		873		1543	1111
		996			1119
		1053			1145
		1071			1147
		1085			1154
		1180			1158
		1356			1162
					1164
					1197
					1203
					1211
					1237

* No summaries provided for this bill,
but the full text is included in the 1971 packet.

WBR:PAM:ELB:dvs
DJ 166-012-3
JO422
JO439
JO452

December 28, 1984

Ms. Deborah Seiler
Assistant Secretary of State
Elections and Political Reform
1230 J Street
Sacramento, California 95814

Dear Ms. Seiler:

This refers to A.B. 793, Chapter 165 (1983), which provides for the consolidation of the Hanford and Lemoore Judicial Districts in Kings County; A.B. 1956, Chapter 758 (1983), which requires that when municipal and school district elections are consolidated that the nomination period be the same as for the school district; and to S.B. 676, Chapter 1249 (1983), which provides for the consolidation of the Central and Southern Judicial Districts into the Municipal Court District for Monterey County, California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on November 1, 1984.

The Attorney General does not interpose any objections to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 5148).

ATTACHMENT C

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

cc: Public file

WBR:JKT:SAT:gmh
DJ 166-012-3
N2861-2909

February 28, 1986

Ms. Deborah Seiler
Assistant to the Secretary of State
Elections and Political Reform
1230 J Street
Sacramento, California 95814

Dear Ms. Seiler:

This refers to the forty-nine statutes relating to voting enacted in 1985 for the State of California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 30, 1985.

The statutes are as follows:

Chapter:

17 (A.B. 120)
34 (A.B. 527)
71 (S.B. 123)
91 (S.B. 979)
97 (A.B. 458)
114 (A.B. 691)
133 (S.B. 61)
225 (S.B. 569)
277 (A.B. 2369)
301 (S.B. 1288)
310 (A.B. 591)
319 (A.B. 2366)
320 (A.B. 1088)
775 (A.B. 745)
798 (A.B. 45)
839 (A.B. 992)
847 (A.B.1431)
896 (S.B. 572)
899 (S.B. 621)
906 (S.B.1322)
941 (S.B. 776)
985 (A.B.1350)
1042 (S.B.1289)
1129 (S.B.1333)
1200 (A.B. 869)
1267 (A.B.1190)

ATTACHMENT D

346 (A.B. 2526)
382 (A.B. 1015)
420 (A.B. 759)
450 (S.B. 92)
480 (A.B. 923)
498 (A.B. 688)
541 (A.B. 115)
659 (S.B. 1245)
602 (A.B. 1152)
617 (S.B. 308)
702 (S.B. 116)
704 (A.B. 645)
760 (A.B. 1291)
1319 (S.B. 603)
1408 (A.B.1893)
1412 (A.B. 189)
1430 (S.B. 163)
1456 (S.B. 726)
1487 (S.B. 695)
1514 (S.B. 360)
1524 (S.B. 181)
1582 (S.B. 821)
1599 (A.B. 558)

With the exception of the three Chapter discussed below, the Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

The provisions of the following Chapters have been viewed as enabling legislation:

97 (A.B. 458)
114 (A.B. 691)
310 (A.B. 541)
320 (A.B. 1088)
382 (A.B. 1015)
702 (S.B. 116)
704 (A.B. 645)
760 (A.B. 1291)
847 (A.B. 1431)
896 (S.B. 572)
906 (S.B.1322)
1408 (A.B.1893)
1412 (A.B. 189)
1430 (S.B. 163)
1487 (S.B. 695)

Accordingly, any changes affecting voting which are implemented by political subdivision in Kings, Merced, Monterey and Yuba Counties pursuant to these Chapters will be subject to the preclearance requirements of Section 5. See also 28 C.F.R. 51.14.

With regard to Chapters 133 (S.B. 61), 541 (A.B. 115), and 1599 (A.B. 558), the materials you have provided do not satisfy the requirements of a submission under Section 5 of the Voting Rights Act. Each voting change occasioned and each covered jurisdiction affected by these acts must be identified in an unambiguous manner before it can be reviewed by this Department. Allen v. State Board of Elections, 393 U.S. 544, 571 (1969). Also, as set forth in the guidelines, a submission should include:

> a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting. 28 C.F.R. 51.25(b).

If you have any questions concerning the matters discussed in this letter, feel free to call Ms. Shelly A. Thompson (202-724-7567) of our staff. Refer to File Nos. N2861-2909 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division
By:

Gerald W. Jones
Chief, Voting Section

JPT:GS:DOW:ra
DJ 166-012-3
Z8966

March 12, 1990

Ms. Caren Daniels-Meade
Chief, Elections Division
1230 J Street
Sacramento, California 95814

Dear Ms. Daniels-Meade:

This refers to Chapter 608, S.B. No. 1423 (1989), which recognizes the creation of a 10th municipal court judge in Monterey County, California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 9, 1990.

We understand that Monterey County created this judgeship by Resolution. Our records fail to show that this change has been submitted to the United States District Court for the District Columbia for judicial review or to the Attorney General for Administrative review as required by Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes

in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10). Since the change affected by Chapter 608 is related to the creation of this judgeship, it is necessary that these changes be reviewed simultaneously under Section 5. Accordingly, the Attorney General will make no determination with regard to your submission until such time as the creation of this judgeship undergoes Section 5 review. See also 28 C.F.R. 51.22(b).

cc: Public File

By separate letter of this date we have informed Monterey County of the need to obtain Section 5 preclearance of the creation of this judgeship.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Barry H. Weinberg
Acting Chief, Voting Section

cc: Ms. Nancy Lukenbill

No. 97-1396

In The

Supreme Court of the United States

October Term, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,

Appellants,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA,

Appellees,

and

WENDY DUFFY,

Intervenor-Appellee.

On Appeal From The United States District Court For The Northern District Of California

MOTION TO AFFIRM

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QUESTION PRESENTED

WHETHER THE SEVERE PRECLEARANCE PENALTY OF THE VOTING RIGHTS ACT, EXPRESSLY IMPOSED UPON THOSE STATES OR POLITICAL SUBDIVISIONS IDENTIFIED BY THE ACT'S COVERAGE FORMULAE, MAY BE EXTENDED TO RESTRAIN A NON-COVERED STATE WHICH INCLUDES WITHIN ITS BORDERS A COVERED POLITICAL SUBDIVISION.

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MOTION TO AFFIRM

Pursuant to Rule 18.6, Appellee State of California respectfully moves to affirm the order and judgment below on the ground that the questions raised by Appellants are not sufficiently substantial to require additional argument. The Three-Judge District Court's unanimous decision on the merits is based on well-settled principles established by this Court and reflects an accurate interpretation of applicable state and federal law. There is no conflict which requires resolution by this Court.

PROCEDURAL HISTORY OF THE CASE

This case has previously been before this Court on an interim appeal. *Lopez v. Monterey County*, ___ U.S. ___, 117 S.Ct. 340 (1996) (*"Lopez"*). It is a "coverage case," filed under Section 5 of the Voting Rights Act (42 U.S.C. § 1973c), in which Plaintiffs alleged that Monterey County, one of California's 58 counties, failed to obtain required federal preclearance before consolidating seven justice courts and two municipal courts into a single countywide municipal court. Plaintiffs sued only the County, a political subdivision designated as a covered jurisdiction under the Act's coverage formulae. 42 U.S.C. § 1973b(b) *See* 28 C.F.R. Pt. 51, App.; 35 Fed.Reg. 12354 (July 24, 1970); 36 Fed.Reg. (No. 60) 5809 (Mar. 27, 1971). They successfully opposed the County's early motion to join the State as an indispensable party.

In March 1993 the Court ruled that the challenged consolidation ordinances effected election changes, and the County was directed to seek federal preclearance. The

County filed a declaratory judgment action in the District Court for the District of Columbia. However, at the urging of the United States Department of Justice ("USDOJ") and the Plaintiffs (who had intervened),[1] the County dismissed its preclearance action without prejudice and returned with Plaintiffs to the coverage court to seek a permanent, substantive, court-ordered "remedial" election plan. As a result, several years of additional litigation ensued in the coverage court. *Lopez*, 117 S.Ct. at 345-346.

Plaintiffs and the County asked the District Court to impose an election plan which carved the County into race-based "electoral divisions" that were prohibited under State law. The State intervened in defense of its statutes and Constitution, and the Court declined to order Plaintiffs' requested racial divisions; instead, it enjoined municipal court elections and again directed the County to seek federal preclearance. Eventually, however, in December 1994, the Court ordered an "emergency" interim election, directing that the County be divided into four race-based divisions (three of which contained Latino majorities) for purposes of this election.

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[1] During oral argument of the interim appeal, Plaintiffs' counsel explained that Plaintiffs and USDOJ influenced the County to drop its court-ordered preclearance effort: "[S]ubsequent to that filing, *we intervened, and as a result of that intervention, as a result of discussion with the Department of Justice*, Monterey County decided that it could not meet its burden of demonstrating that several of these county ordinances did not have a retrogressive effect." Official Transcript, Oct. 8, 1996 Argument, pp. 7-8; emphasis added.

In November 1995 the District Court recognized that this Court's decision in *Miller v. Johnson*, 515 U.S. ___, 115 S.Ct. 2475 (1995) cast "substantial doubt" on the constitutionality of race-based electoral divisions in this context. Noting that a return to the 1968 judicial election system – the status quo – was not feasible, the Court directed a one-time countywide judicial election. The Court further ruled that the State should be joined as an indispensable party and permitted to move to dismiss Plaintiffs' action:

> If the State believes that the County is only administering a State statute and that the failure to preclear the consolidation ordinances is of no significance, it can seek to lift the injunction and have this Section 5 litigation dismissed.

Nov. 1, 1995, Order at 5.

Plaintiffs appealed from the interim order directing a countywide election. During oral argument of that appeal, Plaintiffs admitted for the first time that no substantive harm under the VRA has been established in this coverage action. No court has yet determined whether the County's pre-1983 consolidations harmed, or enhanced, or had any effect whatsoever upon, Latino voting strength.[2]

On November 6, 1996, this Court filed its opinion in *Lopez*, 117 S.Ct. 340. The Court reemphasized the narrowly restricted jurisdiction and the limited remedial

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[2] QUESTION: And there has never been a determination that there is a substantive violation of Section 5 of the Voting Rights Act?

MR. AVILA: That is correct.

* * * * * * * *

authority of district courts in Section 5 coverage actions, noting that a coverage court may not consider, much less purport to remedy, "retrogression" or any other substantive violation(s) of the Act. *Id.* at 348-349. The Court's remand order returned Plaintiffs' action to essentially the same status that obtained in 1993, leaving further elections enjoined and directing the County promptly to submit its consolidation ordinances for federal preclearance. The Court also expressly recognized that, on remand, the State would be permitted to raise potentially dispositive threshold issues, including arguments that: (1) after the County promulgated its challenged consolidation ordinances between 1972 and 1983, "intervening changes in California law . . . transformed the County's judicial election scheme into a state plan . . . ."; and (2) "the County is not administering County consolidation ordinances in conducting municipal court elections, but is merely implementing California law, for which § 5 preclearance is not needed." *Lopez*, 117 S.Ct. at 340, 347.[3]

> QUESTION: [The County] dropped the suit, and so that leaves us in a posture, as of now, there's been no finding of a substantive violation of section 5.
>
> MR. AVILA: That is correct.

Official Transcript, Oct. 8, 1996 Argument, pp. 7-8.

[3] Appellants and the United States argue that *Lopez* should be given *res judicata* effect as to issues which the Court *expressly declined to address*. Although this Court concluded that the County exercised discretion *when it passed its historic consolidation ordinances*, the Court never ruled on the *current* situation or the effect of intervening State law, specifically reserving those questions for the District Court on remand. *Id.* at 347.

Plaintiffs filed a First Amended Complaint on October 24, 1996 (J.S.App. 83), and the State filed its Motion to Dismiss on November 25, 1996. The State also moved to vacate an order extending the terms of judges elected under the Court's December 1994 race-based division plan. On November 17, 1997, the District Court issued a tentative order granting the State's motions, and on December 12, 1997, the County notified the Court by letter that it had no disagreement with the tentative disposition of the State's motion to dismiss.

On December 19, 1997, the Court issued its final order and judgment, granting the State's motions to dismiss and to vacate. The Court held that: (1) irrespective of historical County ordinances, the present countywide municipal court is a product of intervening, superseding state law, and of a precleared 1983 ordinance; and (2) the State, which has never been designated a covered jurisdiction under the Act's coverage formulae, is not subject to the Section 5 preclearance penalty. J.S.App. 1-12. Plaintiffs' notice of appeal followed. J.S.App. 13.

STATEMENT OF MATERIAL FACTS

Under the Constitution and laws of California, the State has plenary power over its judicial system of trial and appellate courts. *See generally* Cal. Const., Art. VI, and § 5; Cal. Gov. Code, §§ 68070, et seq. [general administrative provisions]; 71001, et seq. [Municipal Courts]; 69502, et seq. [Superior Courts]; 69100, et seq. [Courts of Appeal]; and 68801, et seq. [Supreme Court]. *And see, e.g., County of Sonoma v. Workers' Comp. Appeals Bd.*, 222

Cal.App.3d 1133, 1137 and n. 1 (1990). The Legislature has specific authority to divide counties into municipal court districts (Cal. Const., Art. VI, § 5(a)), and to "provide for the organization and prescribe the jurisdiction of municipal courts." Cal. Const., Art. VI, § 5(c).

In addition, the Constitution establishes the State's Judicial Council, charged with monitoring the condition of judicial business statewide, making recommendations, and "perform[ing] other functions prescribed by statute." Cal. Const., Art. VI, § 6. *See also* Cal. Gov. Code, §§ 68500, et seq. One such statutory function is to recommend consolidation or enlargement of judicial districts, where appropriate, to promote administrative economies. Cal. Gov. Code, § 71042.

Pursuant to this authority, the Judicial Council undertook an evaluation of the County's then-existing justice courts and municipal courts in 1972. The State's recommendation, reflected in a letter from the Chief Justice of California, was that these lower courts should be merged into a *single consolidated countywide municipal court* to further important state policies:

> It is recommended by the Judicial Council that the lower courts in Monterey County be consolidated into a county-wide municipal court district with the new court sitting full time in Salinas and Monterey and holding sessions in King City as needed.

State's Appendix ("S.A.") 1. The report suggested that justice courts be consolidated "[w]henever a judicial

vacancy occurs in a justice court." *Id.* at 2.[4] The County thereafter followed these recommendations in increments, as judicial vacancies occurred and opportunities arose to merge courts.[5]

In 1979, the State exercised its plenary power, amending California Government Code section 73560 to prescribe the configuration and name of a single municipal court in Monterey County:

> There is in the County of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District. This article applies to the municipal court established within the judicial district which shall be known as the Monterey County Municipal Court.

Cal. Stats. 1979, Ch. 694, § 1. *See also Lopez*, 117 S.Ct. at 344, footnote [*]; Order, J.S.App. 6. In 1983, the State further amended its statutes to permit consolidation of the County's remaining two justice courts with this State-defined municipal court; it authorized an increase in the

---

[4] This recommended consolidation was consistent with a marked statewide reduction in the number of inferior trial courts. *See Comment, Trial Court Consolidation in California*, 21 UCLA L.Rev. 1081 (1974). *See also, e.g., 1991 Annual Report of Judicial Council to Governor and Legislature*, p. 104, Table 5 [S.A. 27].

[5] *See Lopez*, 117 S.Ct. at 344: "Between 1972 and 1983, the County adopted six ordinances, which ultimately merged the seven justice court districts and two municipal court districts into a single, county-wide municipal court . . . ." *And see* Cal. Gov. Code, § 71040.

number of judges contingent upon such consolidation. *See* Cal. Gov. Code, § 73562; Cal. Stats. 1983, ch. 1249, § 3. The County responded by passing Ordinance No. 2930, resulting in a single countywide court. That 1983 change – including the County's ordinance – received administrative preclearance from USDOJ. Order, J.S.App. 7; *see also Lopez*, 117 S.Ct. at 345.[6] And in 1994, California's voters adopted Proposition 191, thereby abolishing all justice courts throughout the State. Cal. Const., Art. VI, §§ 1, 5(b).[7]

ARGUMENT: REASONS TO AFFIRM

I. THE CURRENT COUNTYWIDE COURT IS DICTATED BY STATE LAW AND PRECLEARED ORDINANCE

By the time Plaintiffs filed their Section 5 coverage action in late 1991, the object of their challenge – historic consolidation ordinances adopted between 1972 and 1983

[6] USDOJ concedes that it precleared Ordinance 2930. *See* Jan. 30, 1997 U.S. Amicus Brief in Response to State's Motions, at p. 7, n. 5; May 1996 Brief for the U.S. as Amicus in the interim appeal, Case No. 95-1201, at p. 15, n. 10. *And see* March 1998 U.S. Amicus Brief in this appeal ("U.S. Brief"), at 3.

[7] Similarly, in the upcoming statewide primary election on June 2, 1998, State voters will decide whether to adopt Proposition 220. If adopted, Proposition 220 would, among other things, "permit[] superior and municipal courts within a county to consolidate their operations if approved by a majority of the superior court judges and a majority of municipal court judges in the county." *Existing municipal courts in such a county "would be abolished . . . ."* Cal. Primary Election Ballot Pamphlet, Analysis of Proposition 220, S.A. 39; emphasis added.

– had become immaterial. Rather, as the District Court correctly found, Monterey's countywide municipal court was by then a product of *intervening state law*: "Superseding changes in California law have converted the County's judicial election scheme into a state plan . . . ." Order, J.S.App. 6. The superseding effect of state law was underscored in 1994, when justice courts – which constituted seven of the County's nine inferior courts in 1968 (*Lopez*, 117 S.Ct. at 343) – were altogether eliminated from the State's judicial system by constitutional amendment.[8]

The Court's finding is solidly anchored in law and fact. As noted above, the California Constitution vests in the Legislature the power to divide counties into municipal court districts "as provided by statute" and to direct their organization. Cal. Const., Art. VI, §§ 5(a),(c); Order, J.S.App. 6. In 1979, the Legislature exercised this power by prescribing, in clear terms, a single municipal court for the County "on and after the effective date of this section . . . ." Cal. Gov. Code, § 73560; Cal. Stats. 1979, Ch. 694, § 1.

Prior to this 1979 State directive, to be sure, the County itself had passed various ordinances to consolidate and rename inferior courts, pursuant to authority delegated under California Government Code 71040, and had implemented these changes without federal preclearance. *See* Order, J.S.App. 2; *Lopez*, 117 S.Ct. at

[8] In asserting that, absent the 1983 consolidation, Proposition 191 would simply have changed existing justice courts into independent municipal courts (U.S. Brief at 18, n. 8), the United States forgets the State's constitutional restrictions on the size and configuration of municipal courts. *See Lopez*, 117 S.Ct. at 344.

344-345. But the Legislature's statutory establishment of a new municipal court in 1979 plainly superseded any prior alterations made by the County, rendering those changes, and any related preclearance issues, entirely moot. *See, e.g., City of Monroe, et al. v. United States*, ___ U.S. ___, 118 S.Ct. 400, 401-402 (1997) [local covered jurisdiction's obligation to preclear changes in local charter *ceases* after enactment of superseding and controlling statewide legislation]; *Young, et al. v. Fordice, et al.*, ___ U.S. ___, 117 S.Ct. 1228 (1997) [covered jurisdiction not required to seek preclearance of change imposed by superior power, except to the extent that covered jurisdiction exercises discretion in implementation].

The Legislature's 1979 statutory amendment " '*repeal[ed] the existing provisions* relative to the municipal court in Monterey County *and enact[ed] new provisions establishing a single judicial district for the municipal court* in Monterey County . . . .' " Order, J.S.App. 6, quoting official Digest (AB 628); emphasis added. *See also* J.S.App. 32. The supremacy of the State's later enactment is quite clear. Cal. Const., Art. VI, § 5 [Legislature's authority over municipal courts]; Art. XI, § 1(a) [counties are "legal subdivisions of the State"]; Art. XI, § 1(b) ["Legislature shall provide for county powers"]. *And see, e.g.*, Cal. Gov. Code § 71001 [prior laws relating to municipal courts remain in effect "until altered by the Legislature"]. "Any local law that directly conflicts with state legislation is void." *Galvan v. Superior Court*, 70 Cal.2d 851, 856 (1969); *accord, Building Industry Assn. v. City of Livermore*, 45 Cal.App.4th 719, 724 (1996); *Cedar Shake & Shingle Bur. v. City of Los Angeles*, 997 F.2d 620, 623 (9th Cir. 1993).[9]

In 1983, the Legislature further amended state law to permit the County to merge its two remaining justice courts into the municipal court. Cal. Gov. Code, § 73562; Cal. Stats. 1983, ch. 1249, § 3. Both the State's 1983 amendment and the County's corresponding 1983 consolidation ordinance received federal preclearance; hence, there are no remaining Section 5 issues associated with that final step in the unification process. *See* Order, J.S.App. 6-7; fn. 6, *ante*. Further, the subsequent elimination *by the State* of all justice courts in every county, through adoption of Proposition 191 in 1994, would have resulted in a countywide municipal court in Monterey County even in the absence of the County's 1983 ordinance. J.S.App. 8; Cal. Const., Art. VI, § 5. In either event, as the District Court correctly observed: "The County, as a subordinate jurisdiction of the State, lacks the discretion to choose a voting plan that does not involve a countywide district." J.S.App. 9.

There is thus abundant support for the District Court's determinations that: (a) the countywide municipal court is presently, and was in 1991, a state plan; and (b) to the extent that the County's 1983 consolidation

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[9] The County agrees that Cal. Gov. Code § 73560, which now prescribes a single countywide municipal court district, "does not allow Monterey County to modify and consolidate municipal or justice court districts." County Ans. to Amended Comp., p. 3, ¶ 5. S.A. 30-31. The County also acknowledges that it "is a political subdivision of the State," and that State statutes "are binding and enforceable against [it]." *Id.* at p. 4, ¶ 15. S.A. 33.

ordinance changed the municipal court from its 1979 configuration to its present countywide status, that ordinance was precleared by USDOJ. These findings must be affirmed on appeal, and present no substantial questions requiring this Court's review or resolution.

II. THE STATE OF CALIFORNIA IS NOT SUBJECT TO SECTION 5's PRECLEARANCE PENALTY

This appeal rests on Appellants' claim that States never designated as presumptively suspect "covered" jurisdictions under the VRA must nonetheless obtain federal permission before implementing their sovereign legislative and administrative acts whenever one or more *political subdivisions* within the States – here, 4 of California's 58 counties – have been separately identified under Congress' Section 4(b) coverage formulae. 42 U.S.C. § 1973b(b). However, Appellants' proposed approach, which would extend the preclearance penalty far beyond the Act's targeted jurisdictions, lacks any support in case law, in the plain language of Sections 4 and 5, or in the policies underlying the preclearance penalty. The claim was properly rejected by the District Court. J.S.App. 4-5 and n. 1.

A. The State is Not a Covered Jurisdiction

The State is not a designated covered jurisdiction; it has never been identified, under any coverage formula, as a covered "State or political subdivision" subject to Section 5's preclearance penalties. *See* 28 C.F.R., App. to Part 51. The District Court's decision is, in this respect, undisputed and unimpeachable. J.S.App. 5 and n. 1.

B. Under the Act's Plain Language, Application of the Preclearance Penalty is Restricted to Statutorily Designated States or Political Subdivisions

1. Section 5 Expressly Incorporates the Act's Coverage Formulae

Congress has provided specific formulae in Section 4(b) to determine which governmental bodies are subject to the preclearance penalty. According to the Act's plain language, federal preclearance is required *only as to voting changes initiated by an identified covered jurisdiction* – i.e., a "State or political subdivision" designated by USDOJ and the Census Bureau as coming within the statutory coverage formulae. Section 5's opening sentence defines the reach of that preclearance requirement as follows:

> Whenever *a State or political subdivision . . . with respect to which the prohibitions set forth in section 1973b(a) [Section 4(a)] of this title based upon determinations made under the second sentence of section 1973b(b) [Section 4(b)] of this title are in effect* shall enact or seek to administer any [voting change] . . . *such State or subdivision* may institute an action . . . [for preclearance] . . . : *Provided*, That such [voting change] . . . may be enforced without such proceeding if [it] . . . has been submitted by the . . . *State or political subdivision* to the Attorney General and the Attorney General has not interposed an objection . . . .

Emphasis added. It follows, of course, that *unless* a State or subdivision has been determined to be a covered jurisdiction under Section 4(b), or is a subordinate subdivision

or "instrumentality" of such a covered jurisdiction,[10] it remains free to "enact" or to "seek to administer" voting changes without prior permission from USDOJ or the federal courts. *See* J.S.App. 4-5.

2. The Phrase "Seek to Administer" Does Not Support Appellants' Theory

Appellants ignore Section 5's incorporation of these specific coverage formulae, and instead focus on Congress' inclusion of the phrase "seek to administer." Appellants argue that these three words can *only* refer to a subdivision's implementation of State-dictated programs; otherwise, they contend, any distinction between the term "enacts" and the term "seeks to administer" would be "rendered meaningless." J.S. 13.

Appellants' argument is readily refuted, however; it ignores the fundamental structure and function of governmental bodies, and it defies common sense. Governments – including covered States and covered local subdivisions – have at least two and often three functions or branches: executive, legislative, and perhaps judicial. Voting changes might be effected through any of these channels, and particularly through formal legislation or rulemaking ("enact") and through discretionary executive directives ("seek to administer"). Congress' use of

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[10] *See United States v. Board of Commissioners of Sheffield, Alabama*, 435 U.S. 110 (1978) (*"Sheffield"*) and *City of Rome v. United States*, 446 U.S. 156 (1980), discussed *infra*.

both terms merely reflects the view that *a covered jurisdiction* may not initiate *either* kind of change without preclearance. *See, e.g., NAACP v. Hampton County Election Comm'n.*, 470 U.S. 166, 178 (1985) [preclearance requirement "reaches informal as well as formal changes"].[11]

If Congress had not included both terms, then a host of voting changes might have escaped the preclearance penalty because they did not flow from formal legislative enactments. *See, e.g., Morse v. Republican Party of Virginia*, ___ U.S. ___, 116 S.Ct. 1186 (1996) [political party imposing registration fee]; *Perkins v. Matthews*, 400 U.S. 379 (1971) [changing locations of polling places]. Thus, the term "seeks to administer" plays an important substantive role in broadly describing changes *initiated by a covered jurisdiction*. Under the District Court's common-sense construction, neither the term "enact" nor the term "seek to administer" is superfluous. Indeed, the very words "seek to" imply that the covered jurisdiction *must have some choice or discretion* in initiating the administrative change – discretion that does not exist when, as here, the change is dictated by a superior jurisdiction.

The District Court's analysis finds powerful support in several of this Court's decisions. In *Young v. Fordice*,

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[11] The District Court's interpretation also finds support in Appellant's quotations from Webster's New World Dictionary, distinguishing "enact" (to make into law) from "administer" (to manage or direct). J.S. 13. A covered jurisdiction might use either process to *initiate* changes. *See Young*, 117 S.Ct. 1228, 1236; *Foreman v. Dallas County, Tex.*, ___ U.S. ___, 117 S.Ct. 2357, 2358 (1997); *NAACP v. Hampton Co.*, 470 U.S. 166, 178.

117 S.Ct. at 1236, this Court described "administrative practices" as "practices that are not purely ministerial, but *reflect the exercise of policy choice and discretion* by [the covered jurisdiction's] officials." Emphasis added. *See also Foreman*, 117 S.Ct. at 2357 [although state statute precleared, county's exercise of discretion thereunder must also be precleared]; *NAACP v. Hampton Co.*, 470 U.S. 166, 178. Indeed, *Young's* holding – that a covered jurisdiction is not required to preclear voting changes imposed by superior powers unless local discretion is retained and exercised – appears fully to answer the question presented in this appeal. *City of Monroe*, 118 S.Ct. 400, also strongly supports the judgment below. There, a covered local jurisdiction was no longer required to seek preclearance of prior changes in its local charter because those changes were superseded by controlling statewide legislation.[12]

As these cases show, it is the actions of covered governmental bodies that are restricted by the preclearance penalty. If a local covered jurisdiction did not initiate or direct a particular condition and is powerless to modify it, then the question must be whether (a) the superior jurisdiction that imposed the condition is itself a covered jurisdiction (*e.g., City of Monroe*), in which case *it*

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[12] *Perkins v. Matthews*, 400 U.S. at 394-395, is also entirely consistent with the District Court's decision here. In *Perkins*, the local jurisdiction *chose to disregard* a 1962 (pre-coverage) state law requiring at-large elections, and instead conducted elections by ward in 1965. Accordingly, that local jurisdiction's later change to at-large elections, in 1969, was found to be in the nature of a *local discretionary change* rather than a state-imposed pre-Act change.

must obtain preclearance, or (b) the superior jurisdiction is not covered (*e.g., Young*), in which case preclearance is unnecessary.

3. Appellants Lack The Clear Statutory Language Required to Support Their Theory

Appellants have an imposing burden, as this Court has often observed: courts may not interpret a federal statute to reduce the States' sovereign powers, as Appellants urge here, unless Congress has included "unmistakably clear" language to that effect in the statute itself. Courts are flatly prohibited from *assuming* or *inferring* any such intent by Congress:

> [I]f Congress intends to alter the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute." *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 [1985] . . . ; *see also Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 [1984] . . . Congress should make its intention "clear and manifest" if it intends to pre-empt the historic powers of the States, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 [1947]. . . .

Gregory v. Ashcroft, 501 U.S. 452, 460-461 (1991), quoting from *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65 (1989). *And see Reno v. Bossier Parish School Board, et al.* ("*Bossier Parish*"), ___ U.S. ___, 117 S.Ct. 1491, 1500 (1997) [Court will not assume that Congress would "impose a demonstrably greater burden on the jurisdictions covered by § 5" without clear statement of intent and/or specific amendment to statute]. The purpose of requiring absolute

clarity in statutory language is to guarantee that Congress fully and carefully considered its intrusion into the States' domain, and appreciated the critical ramifications thereof upon interests of federalism:

> In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision. [Citations omitted.]

Gregory, at 461. Here, as their contrived and contorted reading of the phrase "seek to administer" suggests, Appellants cannot point to *any* congressional amendment or clear statutory statement that supports their theory.[13]

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[13] Neither can Appellants provide any non-statutory statements manifesting a clear and unmistakable intention to impose the preclearance penalty upon non-covered States. The only "evidence" Appellants proffer of "congressional intent" is a single statement *by a partisan spokesman*, "Mr. Suitts," during a single day of Senate subcommittee hearings in February 1982, in response to a single question by Senator Hatch, who openly doubted whether a non-covered State's enactments could accurately be included in a tabulation of legislation deemed subject to preclearance. J.S. 17-18. *The witness conceded that he knew of no Supreme Court case holding that non-covered states are subject to the preclearance requirement and that he knew of no case in which that issue had been argued.* Hrgs. by Senate Subcomm. of Comm. on Judiciary, 97th Cong., 2nd Sess., Vol. 1, p. 599 (1983); emphasis added. His testimony was later briefly summarized in a Senate Report. *See* Senate Report No. 97-417, 97th Cong., 2d Sess., at p. 12, n. 32 (May 25, 1982).

Although Appellants portray footnote 32 in a 239-page report as a "clear directive" from Congress, it is nothing of the sort. A careful reading of the footnote in context reveals that it is simply an addendum to the summary of *Mr. Suitts' views*,

4. Because It Severely Intrudes Upon Sovereign Rights, The Preclearance Penalty Must Be Narrowly Construed

The District Court's conclusion, that Section 5 targets "only those enactments by jurisdictions suspected of abridging the right to vote and not those put in force by a non-covered, superior jurisdiction," is also consistent with, if not compelled by, this Court's decisions in *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) and *Briscoe v.*

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explaining the *data compiled by his organization*. And even if that single footnote sentence could, arguendo, fairly be attributed to the Committee rather than a partisan witness, this Court has expressly held, in *Bossier Parish*, 117 S.Ct. at 1500, that such obscure references cannot remotely satisfy the requirement that Congress, if it wishes to "impose a demonstrably greater burden" on States, must do so in a clear statement and/or specific amendment.

A review of matters that *were* discussed in the extensive hearings and debates surrounding the VRA, and in the 239-page Senate Report, underscores this conclusion. *See, e.g.*, Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 Washington and Lee L. Rev. 1347 (1983). For example, members of Congress repeatedly alluded to this Court's analysis in *Katzenbach*, and voiced concern that more restrictive "bailout" requirements for covered jurisdictions might render Section 5 unconstitutional. They also discussed at length the question whether to expand the Act's definition of covered jurisdictions. *E.g.*, Boyd & Markman at 1372-1374, 1380-1381, 1385, 1407-1409, 1420. In view of Congress' detailed attention to the scope of Section 5 coverage and to the availability of "bailout," Appellants' citation to Mr. Suitts' single obscure and defensive comment demonstrates an *utter absence* of congressional intent to extend the preclearance penalty to non-covered States.

Bell, 432 U.S. 404 (1977), wherein preclearance was challenged *by two covered States* as an unconstitutional usurpation of powers reserved to the States. There, the Court recognized that the preclearance requirement – which, in effect, "automatically suspends the operation of voting regulations enacted [by covered jurisdictions]" (*Katzenbach*, 383 U.S. at 335) – was an extraordinary congressional remedy which exacted severe and unprecedented "federalism costs." *See Miller v. Johnson*, 115 S.Ct. 2475, 2493 (1995); *Katzenbach*, 383 U.S. at 358-362 [Black, J., concurring and dissenting]. This extreme penalty was nevertheless deemed permissible for two principal reasons.

First, the Court was satisfied that Congress had carefully crafted its initial *coverage formula* to capture only those "perpetrators of evil" known by Congress to have engaged in "widespread and persistent discrimination in voting" through "obstructionist tactics" and "systematic resistance to the Fifteenth Amendment." *Katzenbach*, 383 U.S. at 328. The Court repeatedly emphasized that Congress' original Section 4(b) formula was intentionally designed to ensnare only known persistent wrongdoers, and determined that "Congress was therefore entitled to infer a significant danger of the evil *in the few remaining States and political subdivisions covered by § 4(b) of the Act.*" *Id.* at 329; emphasis added. *And see Briscoe*, 432 U.S. at 414; A. Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights*, pp. 17, 21-22, 39, 180 (1987) ("Thernstrom").

Second, the Court emphasized that any innocent governmental unit wrongly *caught within the coverage formula*, and thereby made subject to preclearance, could readily

extricate itself from the Section 5 penalty through Section 4(a) of the Act (42 U.S.C. § 1973b(a)) – the "bailout" provision – which imposed a "quite bearable" burden of proof upon such States and subdivisions. *Katzenbach*, at 332; *and see Briscoe*, 432 U.S. at 412 and n. 11.[14]

More recently, this Court has suggested that Section 5's preclearance punishment may be unjustified in some circumstances. *See Miller*, 115 S.Ct. at 2493. *And see Bossier*

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[14] The Act's "bailout" provision, too, strongly supports the District Court's reasoning here. Under Section 4(a), jurisdictions subject to preclearance may seek a declaratory judgment that preclearance is no longer necessary. Section 4(a) describes those entities upon which the preclearance penalty is imposed (and which may, therefore, seek "bailout") as falling in three, and *only* three, categories: (1) "any State with respect to which the determinations [inclusion within coverage formulae] have been made . . . "; (2) "any political subdivision of such [covered] State . . . , though such determinations were not made with respect to such subdivision as a separate unit . . . " [the *Sheffield* situation]; and (3) "any political subdivision with respect to which such determinations have been made as a separate unit . . . "

Congress did not make bailout available to the fourth category urged by Appellants – i.e., "any State containing one or more covered subdivisions, though no [coverage] determination has been made as to such State" – *because nothing in the Voting Rights Act contemplates that such presumptively innocent States would be burdened by the preclearance penalty in the first place.* Only the third category in Section 4(a) relates to conditions in non-covered States, and it says *nothing* about imposing the preclearance penalty upon those *States*. Rather, preclearance is required only of any specific *"political subdivision"* caught in the coverage formulae; and the penalty is expressly imposed upon such a subdivision *"as a separate unit."* Emphasis added.

Parish, 117 S.Ct. at 1498 [noting "the serious federalism costs already implicated by § 5"]. If principles of federalism lead the Court to question application of the preclearance penalty *to covered jurisdictions*, then the penalty can have no application whatsoever *to governmental units which, like California, were never identified as suspect under the Act's coverage formulae in the first place*. Any attempt to require such presumptively innocent sovereign governmental units "to entreat federal authorities in faraway places for approval of local laws before they can become effective" (*Katzenbach*, 383 U.S. at 359, Black, J. concurring and dissenting) would be an unwarranted and impermissible intrusion into the States' sovereign domain. *See also, e.g., City of Rome*, 446 U.S. at 202 [Powell, J., dissenting] ["preclearance, like any remedial device, can be imposed only in response to some harm"].[15] Non-covered jurisdictions may be sued under Section 2, or under the Constitution; but Section 5 has no application.[16]

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[15] *See also* Thernstrom, at 40 ("Had the original act in 1965 been less precise in its aim, had it upset the normal balance in federal-state relations in both North and South, it would not have stood up to constitutional scrutiny.") *Cf. Perkins v. Matthews*, 400 U.S. at 406-407, Black, J., dissenting: "Except as applied to a few Southern States in a renewed spirit of Reconstruction, the people of this country would never stand for such a perversion of the separation of authority between state and federal governments."

[16] Appellants and the United States decry the "serious loophole" that would result from affirming the District Court, but their claim is specious. Any "loophole" has been created *by Congress*, which elected not to place each of the 50 States and all of their subdivisions under the preclearance penalty, but rather to penalize only those whose status as "presumptive wrongdoers" is established by the Act's coverage formulae.

III. APPELLANTS' THEORY FINDS NO SUPPORT IN DECISIONAL LAW

Although Appellants cite several judicial decisions in their Jurisdictional Statement, *they present no case law that directly supports their claim*. The central notion underlying their appeal – namely, that federal preclearance requirements should be extended beyond the Act's coverage provisions to encompass legislative enactments and administrative decrees of non-covered States – has never been addressed, much less adopted, by this Court. Rather, as USDOJ concedes, the argument raises an issue of first impression, and (apart from the unanimous decision below) "there is no case law that explicitly discusses the issues . . . ."[17]

Appellants therefore resort to cases in which the issue was *not* raised or discussed, and they ask this Court to *infer from the courts' silence* that there were *implied* precedential rulings therein that bolster Appellants' theory. J.S. 9-12. *And see, e.g., Shaw v. Hunt*, ___ U.S. ___, 116 S.Ct. 1894 (1996) (*"Shaw II"*); *United Jewish Organizations, Etc. v. Carey*, 430 U.S. 144 (1977) (*"UJO"*). In *Shaw II*, as Appellants admit, "the jurisdictional issue was not

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[17] At the District Court's December 16, 1997, Hearing on Tentative Order, Mr. Cal G. Gonzales, counsel for USDOJ, explained: "[T]his case, and the argument raised here, are first impression. We know of no cases, or no argument out there, *there is no case law that explicitly discusses the issues that are confronted by this court.*" Transcript at p. 37; emphasis added. *See also* U.S. Brief at 19: "The Court has never addressed whether or how that 'lack of discretion' concept would apply to a situation in which a covered political subdivision must administer voting changes under *state* law." Emphasis in original.

addressed directly . . . ." J.S. 11.[18] And the *UJO* language cited by Appellants as "analysis" is simply a recitation of procedural history, not an appraisal of the scope of Section 5's preclearance penalty.[19]

It is well settled, however, that such non-resolutions do not serve as precedent. *See, e.g., Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993) [Where issue never squarely addressed before, and at most has been assumed, Court is free to address and decide it]; *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 119 (1984) [" '[W]hen

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[18] Neither was the jurisdictional issue addressed in *"Shaw I." Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816 (1993). Rather, the Court merely observed that North Carolina had voluntarily submitted its redistricting plan for preclearance. *Id.* at 2820.

[19] In describing the procedural history of *UJO*, the Court may appear to have suggested that non-covered States must submit their plans for preclearance:

> Litigation to secure exemption from the Act was unsuccessful, and it became necessary for New York to secure the approval of the Attorney General or of the United States District Court for the District of Columbia for its 1972 reapportionment statute insofar as that statute concerned Kings, New York, and Bronx Counties.

UJO, at 148-149; *and see id.* at 156-157. However, closer examination reveals that in *UJO*, as in the *Shaw* cases, the State had voluntarily submitted to Section 5 scrutiny, and the issue whether Section 5 could be stretched beyond covered units was not raised or litigated, or even discussed, in that proceeding. *See also United Jewish Org. of Williamsburgh v. Wilson*, 510 F.2d 512 (2d Cir. 1975). Rather, once New York's "bailout" request was denied, the *UJO* Court – without addressing or deciding the validity of New York's *voluntary* submission to Section 5 coverage – merely explained the logical consequences thereof.

questions of jurisdiction have been passed on in prior decisions *sub silentio*, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us.' " (Quoting from *Hagans v. Lavine*, 415 U.S. 528, 533, n. 5 (1974))]; *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 and n. 9 (1952).[20]

The case of *Sheffield*, 435 U.S. 110, likewise provides no help to Appellants. *See* J.S.App. 5, n. 1. *Sheffield* turned on a quite different principle: that, when a *State* has been designated as a covered jurisdiction, then the cities and other *subordinate political subunits subject to the control of that covered State* are also deemed covered. *And see City of Rome*, 446 U.S. 156 [where city's coverage derives from State's coverage, city may not take advantage of "bailout" provision unless entire covered State qualifies for "bailout"]. *See also* U.S. Brief at 15.

Here, of course, the State is plainly not a "subdivision" or "instrumentality" of, or "subordinate to," the

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[20] *Brown Shoe Co. v. United States*, 370 U.S. 294, 306-307 (1962), cited by Appellants, is not to the contrary. There, in addressing the Supreme Court's appellate jurisdiction under the Expediting Act, this Court observed that the jurisdictional issue (finality of the district court's orders) *had previously been expressly raised and resolved*, though "[o]n but few occasions . . . ." With respect to prior cases in which the jurisdictional question had been "passed over without comment," however, the Court noted that "we are not bound by previous exercises of jurisdiction in cases in which our power to act was not questioned but was passed *sub silentio*. . . ." (citing *U.S. v. Tucker Truck*).

covered County, and the County clearly acted pursuant to State policy in this case.[21]

IV. USDOJ REGULATIONS CANNOT EXPAND THE STATUTORY REACH OF THE PRECLEARANCE PENALTY

The District Court correctly rejected Appellants' further claim that USDOJ regulations (specifically, 28 C.F.R. §§ 51.1(a) and 51.23(a)) somehow operate to bring non-covered jurisdictions within the scope of Section 5's preclearance penalty. J.S.App. 5, n. 1; *and see* J.S. 19-21. To the extent that these regulations may purport to expand the penalty, of course, they defy Congress' specific coverage provisions; they undermine the sovereignty of non-targeted states; they are patently beyond USDOJ's authority; and they are entitled to no deference whatsoever.[22] Nor

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[21] In suggesting that the State merely "ratified" or "incorporated" County policy choices here, Appellants ignore the Judicial Council's 1972 report, which clearly establishes that countywide consolidation of Monterey's inferior courts was *the State's* policy choice, in which the County acquiesced. S.A. 1-26; S.A. 27; *and see* J.S.App. 7. Further, the State's 1979 amendment to Cal. Gov. Code § 73560 does not reference, much less "incorporate," any County ordinances.

[22] No deference is accorded to USDOJ regulations or interpretations not authorized by the Act and/or violative of the U.S. Constitution. *See, e.g., Bossier Parish,* 117 S.Ct. 1491 [USDOJ regulation ignores Congress' clear distinction between Section 2 and Section 5]; *Miller v. Johnson,* 115 S.Ct. 2475 (1995) [USDOJ preclearance standards promote discrimination, racial stereotyping, and unconstitutional race-based districting]; *Shaw II,* 116 S.Ct. 1894 [same]; *Bush v. Vera,* ___ U.S. ___, 116 S.Ct. 1941 (1996) [same]; *Presley v. Etowah County Comm'n.,* 502 U.S. 491, 508 (1992) [USDOJ ignores limitation of preclearance penalty to voting changes].

are unauthorized USDOJ regulations redeemed or given more weight merely because they were promulgated long before, or were followed in the past. *See, e.g., Bossier Parish,* 117 S.Ct. 1491 [Court invalidates regulation (28 C.F.R. section 51.55(b)(2)) long followed by USDOJ in evaluating preclearance submissions].

Appellants' recitation of the principle that "ambiguities" in the scope of Section 5 coverage "must be resolved against the submitting jurisdiction" (J.S. 20-21) is, of course, inapposite here. That convention *presupposes* that the "submitting jurisdiction" is a covered State or a covered subdivision, and is employed only to resolve *what kinds* of voting changes initiated by such a body require preclearance. *See, e.g., NAACP v. Hampton County,* 470 U.S. at 178-179. In addressing the very different threshold issue of whether a particular governing body must submit *any* of its enactments and administrative decrees for preclearance, the Act includes specific formulae to identify and list the covered bodies, leaving no room for ambiguity.[23] If there were ambiguity, furthermore, this Court has made it abundantly clear, in *Will v. Michigan,* in *Gregory v. Ashcroft,* in *Katzenbach,* and in *Miller,* that such ambiguity must be resolved in favor of the sovereignty of the States.

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[23] Here, in view of Congress' specific coverage formulae, the more appropriate maxim is: *Expressio unius est exclusio alterius. Cf. Leatherman v. Tarrant County Narcotics Unit,* 507 U.S. 163, 168 (1993).

V. EXTENDING THE PRECLEARANCE PENALTY WOULD DISSERVE SECTION 5's PURPOSES AND POLICIES

Contrary to the claims of Appellants and the United States, dismissal of this coverage action does nothing to undercut the purpose, policy, or effectiveness of Section 5, or to "circumvent" Congress' intent. Section 5 preclearance is designed and intended only to provide remedial monitoring for those suspect jurisdictions which Congress has identified as having "resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination". *Katzenbach*, 383 U.S. at 335. The purpose and policy of Section 5 is thus entirely achieved so long as *changes devised by covered jurisdictions*, whether legislative or executive in origin, are suspended *to prevent a repetition of the covered jurisdictions' past pattern of wrongdoing*. *See* J.S.App. 5 and n. 1. No valid policy would be served by stretching Section 5 beyond these logical limits, and basic constitutional principles of federalism – not to mention the fundamental voting rights of citizens within non-covered jurisdictions – would be gravely compromised by such an approach.

Furthermore, Appellants' proposed expansion would yield truly bizarre and paradoxical results. Here, for example, the State would be penalized with the preclearance requirement – i.e., treated as a "presumptive wrongdoer" with a record of "ingeniously defying" federal voting rights – only insofar as its enactments and administrative decrees affect any of its four covered counties. With respect to its other 54 counties, and the

tens of millions of citizens residing therein,[24] the State would be treated as a respected sovereign whose directives are *presumptively valid*, and it would remain free to implement any voting changes without prior federal review or approval. Thus, the State would be bifurcated, with respect to election practices, at least, and the Legislature could no longer dictate statewide policy: one branch would be controlled by federal authorities (USDOJ and the Washington D.C. District Court), while the other would be controlled by elected state officials.

Taking Proposition 191 as an example, the State might eliminate all justice courts from its judicial system "statewide," but USDOJ could require its "mini-state" of four covered counties to maintain a justice court system. Proposition 220, which voters will consider in June, raises the same specter of a divided, patchwork State, in which all but four counties would be permitted to abolish their municipal courts on the vote of sitting judges. Such "partial coverage" scenarios are illogical, unworkable, and preposterous. Either a State or subdivision falls within Congress' specific coverage formulae, in which case *any* significant voting change it initiates is subject to the preclearance penalty, or it remains free to exercise its

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[24] Hispanics constitute a significant percentage of the population in many *non-covered* California counties: 26.6% of the population of Santa Barbara County, for example; 33.3% of Colusa County; 34.5% of Madera County; 37.8% of Los Angeles County; 45.8% of San Benito County; and 65.8% of Imperial County. *California Statistical Abstract 1995*, p. 19, Table B-5. Hispanics constitute 33.6% of Monterey County's population. *Id.*

sovereign rights and powers without federal oversight and prior restraint.

CONCLUSION

For the foregoing reasons, the unanimous judgment below, holding that Section 5 and its preclearance penalty have no application to the enactments and decrees of a non-covered State, should be affirmed.

Dated: March 27, 1998

Respectfully submitted,

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INDEX TO STATE'S APPENDIX

EXHIBIT A

[p. 55] THE JUDICIAL COUNCIL OF CALIFORNIA
STATE BUILDING, SAN FRANCISCO 94102

August 18, 1972

Mr. Warren Church
Chairman of the Board of Supervisors
Monterey County
P. O. Box 1819
Salinas, California 93901

Dear Mr. Church:

In response to the request of your board the Judicial Council has made a study of Monterey County judicial districts. The recommendations that follow have been prepared in accordance with Section 71042 of the Government Code, which provides as follows:

> "From time to time, following its survey of the condition of business in the several courts, the Judicial Council shall submit to the boards of supervisors its recommendations concerning the consolidation or enlargement of judicial districts and other alteration of district boundaries *with a view toward creating a greater number of full-time judicial offices, equalizing the work of the judges, expediting judicial business, and improving the administration of justice.*" (Emphasis added.)

It is recommended by the Judicial Council that the lower courts in Monterey County be consolidated into a countywide municipal court district with the new court sitting full time in Salinas and Monterey and holding sessions in King City as needed.

The recommended consolidation would be effectuated in the following stages:

1. The Gonzales and Soledad Justice Court Districts should be immediately consolidated into the Salinas Municipal Court District.

This recommendation is predicated on vacancies existing in both the Gonzales and Soledad districts. In the event there is no vacancy in the Gonzales district, then Gonzales should be consolidated with Soledad where a vacancy now exists.

[p. 56] 2. The Monterey-Carmel Municipal Court District and the Salinas Municipal Court District should be consolidated into a single municipal court district as soon as appropriate legislation can be enacted.

3. Whenever a judicial vacancy occurs in a justice court, the district should be consolidated with the municipal court district. However, if a vacancy occurs in the San Ardo or Greenfield Justice Court Districts prior to a vacancy in the King City Justice Court District, the district with the vacancy should be consolidated with the King City district.

A copy of the staff study prepared for the Judicial Council is attached. It includes additional recommendations concerning district boundaries and court locations.

This plan preserves adequate and reasonable access to the courts for the residents of the county, while at the same time permitting the court to function efficiently and

effectively, and would thereby contribute to improving the administration of justice.

Very truly yours,

/s/ Donald R. Wright
Chief Justice of California and
Chairman of the Judicial Council

Attachment

[p. 57] SURVEY OF MONTEREY COUNTY JUDICIAL DISTRICTS

A. COUNTY CHARACTERISTICS

Monterey County is located to the south of the San Francisco Bay Area with Salinas the county seat approximately 110 miles south of San Francisco. It borders on Santa Cruz, San Luis Obispo, San Benito, Kings and Fresno Counties and the Pacific Ocean.

The county has about 100 miles of coastline. The rugged Santa Lucia range forms the western border of the county and the Gabilan and Diablo ranges constitute the eastern border. Running the length of the county from Monterey Bay is the agriculturally rich Salinas Valley which is 10 to 20 miles wide.

Agriculture, which occupies seven percent of the total land area, is the most important element in the county's economy while agricultural-related industries are of additional importance. Tourism is also a major

factor in the economy and the Monterey-Carmel area is a year-round attraction.

Approximately 20 percent of the land area of the county is in state and federal forest and parks, and 9 percent of the county is under military ownership.

Monterey County is approximately 100 miles in length and an average of 35 miles in width. The county has an outstanding road system. U.S. Highway 101 in the Salinas Valley and State Highway 1 on the coast run the length of the county. State Highway 68 is a heavily traveled route connecting the Monterey Peninsula and the Salinas Valley. State Highway 198 [p. 58] runs east from the southern part of the county into the San Joaquin Valley. Other state highways in the county include Highways 156, 183, 146, 25 and 218.

The total population of the county in the most recent federal census was 247,450, a 27 percent increase over its 1960 population. Approximately 62 percent of the population resides in the county's incorporated cities and 17 percent on military bases. Eighty nine percent of the population is concentrated in the northern third of the county which includes Salinas and the Monterey Peninsula areas.

B. JUDICIAL DISTRICTING HISTORY

The county is currently divided into nine judicial districts with two municipal courts and seven justice courts. The two municipal court districts, Salinas and Monterey-Carmel, and the Pacific Grove and Castroville-Pajaro Justice Court Districts are located in the northern

populous portion of the county. The five judicial districts in the southern two-thirds of the county are respectively from north to south, the Gonzales, Soledad, Greenfield, King City and San Ardo Justice Court Districts. The courts in these latter districts are all situated adjacent to U.S. Highway 101.

Prior to the lower court reorganization in the early 1950's, Monterey County had 22 lower courts. At the time of the reorganization the Judicial Council recommended that the county be divided into five judicial districts as follows:

[p. 59] 1. Salinas Municipal Court District

2. Monterey-Pacific Grove Municipal Court District (this also includes the Carmel area)

3. Castroville-Pajaro Justice Court District

4. Soledad-Gonzales Justice Court District

5. King City-Greenfield Judicial District (this also includes the San Ardo District).

The board of supervisors, however, divided the county into two municipal court and eight justice court districts. The only subsequent change was in May 1968 when the Castroville Justice Court District and the Pajaro Justice Court District were consolidated to form the Castroville-Pajaro Justice Court District.

C. REQUEST FOR SURVEY

The Monterey County Board of Supervisors on May 25, 1972 requested the Judicial Council to make a study of the lower court system in the entire county. This request

was prompted by a vacancy in the Soledad Judicial District.

D. INFORMATION CONCERNING EXISTING JUDICIAL DISTRICTS

1. *Salinas Municipal Court District* (two authorized judges)

a. Location: The Salinas Municipal Court District is in the northern portion of the county. Its northern boundary, extending from Monterey Bay to the San Benito County line, forms the southern boundary of the Castroville-Pajaro Justice County District. The district also borders on the Monterey-Carmel Municipal Court District to its west and south [p. 60] and the Gonzales Justice Court District to the southeast. Salinas is very accessible to other sections of the county via Highways 101, 68 and 183. Salinas is approximately 25 miles south of the northern border of the county via Highway 101 and 19 miles from the Monterey-Carmel area on its southwest.

b. Estimated Population:[1] Judicial District – 75,500; Salinas – 61,200.*

c. Court Facilities: The court is located in the county courthouse complex in downtown Salinas. Also located in the complex are three superior court departments, the sheriff-marshal's office, the public defender's office and the district attorney's office. The court facility

[1] Population figures are based on 1970 U.S. census data except for cities for which later data was available.

* February 1972 data.

is very adequate. There is also sufficient public parking area adjacent to the courthouse.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	24,529
Parking filings	42,449
Filings excluding ordinary traffic and parking	7,007
Felony filings	715
Dispositions after felony hearing or contested trial	951
Juries selected and sworn	62

[p. 61] e. Weighted Judicial Caseload:[2] In 1971-72 fiscal year there were 118,499 weighted units, or the workload equivalent for two judges:

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $251,315; 1972-73 fiscal year budget: $281,086.

2. *Monterey-Carmel Municipal Court District* (two authorized judges)[3]

a. Location: The Monterey-Carmel Municipal Court District is located in the northwestern section of

[2] The Judicial Council in its reports to the Legislature relating to the need for additional judges uses a weighted caseload system which applies different weights to the various categories of filings. The standard workload per judge is 58,500 weighted units for one and two-judge courts.

[3] A third judge has been authorized by the 1972 Legislature.

the county and extends from the Monterey Peninsula area southward and includes about one-half of the county's coastline. The populated portion of the district is in the Monterey Peninsula and Carmel Valley areas. The district includes the incorporated cities of Carmel, Del Rey Oaks, Monterey, Sand City and Seaside. The City of Monterey is approximately 19 miles from Salinas on Highway 68. The district includes Ford [sic] Ord and the Naval Post-graduate School.

b. Estimated Population: Judicial District – 106,700 (includes 40,000 living on military bases, of whom about 16,000 are in the City of Seaside); Monterey – 26,950;* Seaside – 36,250;* Carmel – 4,640;* Del Rey Oaks – 1,823; Sand City – 212.

[p. 62] c. Court Facilities: The court is located in a county complex, about a mile from the business area of Monterey and adjacent to Highway 1. The court facilities are very adequate and there is a new courtroom under construction. Departments of the superior court and branches of the district attorney's office and the public defender's office are also located in the same building. Parking presents a problem since the building complex is on top of a hill and the limited parking on the highland level necessitates inconvenient parking and a walk from the lower level.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	26,929
Parking filings	85,283
Filings excluding ordinary traffic and parking	6,788

Felony filings	699
Dispositions after felony hearing or contested trial	1,756
Juries selected and sworn	290

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 133,881 weighted units, or the workload equivalent for 2.3 judges.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $336,705; 1972-73 fiscal year budget: $377,354.

3. *Castroville-Pajaro Justice Court District*

a. Location: The Castroville-Pajaro Justice [p. 63] Court District is located in the extreme northern section of the county and borders on Monterey Bay and Santa Cruz and San Benito Counties. The only judicial district in the county that is contiguous to this district is the Salinas Municipal Court District to its south. Highways 1, 101 and 156 run through the district. There are no incorporated cities in the district. The town of Castroville, where the court sits, is 9 miles from Salinas and 15 miles from Monterey.

b. Estimated Population: Judicial District – 23,350.

c. Court Facilities: The court is located in a county-owned building which also houses a county library branch. The court has no separate jury deliberation room and the courtroom is therefore used for this purpose. The courthouse facilities appear adequate for the court's workload.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	8,635
Parking filings	349
Filings excluding ordinary traffic and parking	1,114
Felony filings	78
Dispositions after felony hearing or contested trial	309
Juries selected and sworn	17

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 26,566 weighted units, or the workload [p. 64] equivalent for approximately .5 judge.[4]

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $49,710; 1972-73 fiscal year budget: $55,512; judge's salary: $14,400 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $6,590; 1972-73 fiscal year budget: $6,930.

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[4] The weighted caseload system was designed for municipal courts. However, for the purpose of this study it was applied to the justice courts. It should be noted that it does not take into consideration that in part-time courts it is difficult to calendar cases in such a way as to make the most efficient use of judge time. Therefore, the justice court judge probably takes more time with his court's workload than is here indicated.

4. *Pacific Grove Justice Court District*

a. Location: The Pacific Grove Justice Court District encompasses a small area on the tip of the Monterey Peninsula and includes only the City of Pacific Grove. The City of Monterey adjoins Pacific Grove.

b. Estimated Population: Judicial District and City of Pacific Grove – 13,500.

c. Court Facilities: The court is located in a modern office building in Pacific Grove and includes a judge's chambers, clerk's office and a very adequate courtroom. There is, however, no separate jury deliberation room.

[p. 65] d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	2,637
Parking filings	2,389
Filings excluding ordinary traffic and parking	563
Felony filings	79
Dispositions after felony hearing or contested trial	154
Juries selected and sworn	13

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 11,675 weighted units, or the workload equivalent for .2 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $32,825; 1972-73 fiscal year budget: $34,094; judge's salary: $11,520 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $4,990; 1972-73 fiscal year budget: $5,730.

5. *Gonzales Justice Court District*

a. Location: The Gonzales Justice Court District is located to the south of the Salinas Municipal Court District with Highway 101 running down the center of the District. This district also borders on the Monterey-Carmel Municipal Court District to the west, the Soledad Justice Court District to the south and San Benito County to the east. The City of Gonzales, where the court sits, is approximately 17 miles south of Salinas and nine miles north of Soledad on Highway 101.

[p. 66] b. Estimated Population: Judicial District – 5,200; Gonzales – 2,575.

c. Court Facilities: The court is located in the City Hall of the City of Gonzales. The courtroom is also used for the City Council and Planning Commission meetings. There is a separate judge's chambers and clerk's office. The courtroom is not adequate for jury trials. There were, however, only six jury trials in 1971-72.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	3,553
Parking filings	94
Filings excluding ordinary traffic and parking	412
Felony filings	8
Dispositions after felony hearing or contested trial	51
Juries selected and sworn	6

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 7,881 weighted units or the workload equivalent for slightly over .1 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $23,320; 1972-73 fiscal year budget: $27,223; judge's salary: $11,520 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $5,400; 1972-73 fiscal year budget: $5,680.

6. *Soledad Justice Court District*

a. Location: The Soledad Justice Court District [p. 67] is located in the central portion of the county. Its most populous area is adjacent to Highway 101. The district lies south of the Gonzales district and also borders on the Monterey-Carmel, Greenfield, King City and San Ardo Judicial Districts. The district includes a very small portion (Anderson Landing) of the coast between the Monterey-Carmel and the San Ardo Judicial Districts. A state prison (Soledad) is located just north of the City of Soledad which is approximately 8 miles south of Gonzales, 25 miles south of Salinas and 28 miles north of King City.

b. Estimated Population: Judicial District – 11,000 (includes 2,400 state prisoners); Soledad – 4,320.*

c. Court Facilities: The court occupies rented quarters in a one-story professional building in the City of Soledad. The courtroom is small for the holding of jury trials. However, there have been no jury trials during the past fiscal year. The facilities also include a clerk's office and a judge's chambers.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	2,548
Parking filings	154
Filings excluding ordinary traffic and parking	505
Felony filings	25
Dispositions after felony hearing or contested trial	50
Juries selected and sworn	0

[p. 68] e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 9,642 weighted units, or the workload equivalent for .2 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $25,385; 1972-73 fiscal year budget: $24,393; judge's salary: $11,520 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $5,725; 1972-73 fiscal year budget: $6,135.

7. *Greenfield Justice Court District*

a. Location: The Greenfield Justice Court District is located in the approximate center of the county between Soledad and King City Justice Court Districts and also borders on the San Ardo Justice Court District to the south. The City of Greenfield is nine miles south of Soledad and 13 miles north of King City on Highway 101.

b. Estimated Population: Judicial District – 4,000; Greenfield – 2,950.*

c. Court Facilities: The court is located in a county rented building in Greenfield. It has a courtroom, a judge's chambers and a clerk's office. The building was formerly a garage and has no windows.

[p. 69] d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	2,610
Parking filings	0
Filings excluding ordinary traffic and parking	293
Felony filings	15
Dispositions after felony hearing or contested trial	14
Juries selected and sworn	4

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 7,104 weighted units, or the workload equivalent for slightly more than .1 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $19,550; 1972-73 fiscal year budget: $20,984; judge's salary: $6,940 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $6,160; 1972-73 fiscal year budget: $6,680.

8. *King City Justice Court District*

a. Location: The King City Justice Court District is located in the east-central portion of the county; to its north and west are the Soledad and Greenfield districts; to its south is the San Ardo district; and on its east

is San Benito County. King City is approximately 47 miles south of Salinas on Highway 101.

b. Estimated Population: Judicial District – 4,700; King City – 3,800.*

[p. 70] c. Court Facilities: The court is located in the City Hall of King City. The court has a large courtroom which also serves as the City Council chambers. There is a separate judge's chambers and clerk's office, the latter, however, being inadequate because of its small size. The county has plans underway for the construction of a new county building in King City which will house the court.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	5,493
Parking filings	141
Filings excluding ordinary traffic and parking	688
Felony filings	18
Dispositions after felony hearing or contested trial	71
Juries selected and sworn	14

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 12,094 weighted units, or the workload equivalent for .2 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $34,115; 1972-73 fiscal year budget: $37,984; judge's salary: $13,500 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $7,360; 1972-73 fiscal year budget: $7,630.

9. *San Ardo Justice Court District*

a. Location: San Ardo Justice Court District is the largest judicial district in area in the county. It [p. 71] occupies most of the southern portion of the county and extends from the ocean to its west to San Benito, Fresno and Kings Counties on its east. On its north it borders on the Soledad, Greenfield and King City districts and to its south is San Luis Obispo County. Included in the district are Hunter Liggett Military Reservation and a portion of Camp Roberts. A long stretch of Highway 1 along the ocean is in the judicial district. The town of San Ardo is 19 miles south of King City.

b. Estimated Population: Judicial District – 3,500 (includes 1,000 living on military bases).

c. Court Facilities: The court is located in the town of San Ardo, just off Highway 101. The court facility is in a rented building which has a courtroom and a clerk's office but no separate judge's chambers.

d. Judicial Business in 1971-72 Fiscal Year:

Nonparking filings	5,309
Parking filings	30
Filings excluding ordinary traffic and parking	372
Felony filings	10
Dispositions after felony hearing or contested trial	34
Juries selected and sworn	13

e. Weighted Judicial Caseload: In 1971-72 fiscal year there were 11,644 weighted units, or the workload equivalent for .2 judge.

f. Court Budgets: Estimated expenditures in 1971-72 fiscal year: $26,180; 1972-73 fiscal year budget: [p. 72] $27,329; judge's salary: $11,520 per year.

Constable's Budget: Estimated expenditures in 1971-72 fiscal year: $7,295; 1972-73 fiscal year budget: $7,610.

E. PROPOSED RECOMMENDATIONS

It is proposed that the Judicial Council recommend the consolidation of the judicial districts in Monterey County into one countywide municipal court district. The court would sit full time in Salinas and Monterey and would hold sessions in King City as needed. In addition, a full-time clerk's office would be maintained in King City and clerk's office services in the City of Soledad as needed.

The proposed consolidation should take effect in the following stages:

1. The Gonzales and Soledad Justice Court Districts should be immediately consolidated into the Salinas Municipal Court District. It is suggested that a clerk's office be maintained in Soledad and that the court temporarily conduct sessions there as needed.

a. Upon the consolidation of the Gonzales and Soledad Justice Court Districts into the Salinas Municipal Court District the western Monterey Bay section (Marina

area) of the Salinas District should be added to the Monterey-Carmel Municipal Court District.

The two-judge Salinas court now has a full workload. The added work from the Gonzales and Soledad courts would [p. 73] amount to the equivalent of approximately .3 of a judge. This increase would probably be offset by the loss of the workload originating in the Marina area which includes a population of approximately 10,000. The Monterey-Carmel court could also give assistance, if needed, to Salinas after a third judge is appointed to that court.

b. It is also recommended for immediate action that the coastal strip from Anderson Landing to the San Luis Obispo County line be added to the Monterey-Carmel district. This would include a very small portion of the Soledad district where that district extends to the ocean and all of Highway 1 now included in the San Ardo Justice Court District.

c. The recommendation to consolidate the Gonzales and Soledad districts into the Salinas district immediately is predicated on the existing judicial vacancy in Soledad and an anticipated vacancy in Gonzales in September 1972. If the judge in the Gonzales district does not follow through on his stated intention to retire, then the Gonzales district should be consolidated with the Soledad district at this time and the consolidation into the Salinas district would be made upon the occurrence of a judicial vacancy in the enlarged justice court district.

2. The Monterey-Carmel and the Salinas Municipal Court Districts should be consolidated into a single municipal court district as soon as necessary legislation can be enacted.

Legislation should be introduced in the 1973 Legislature to provide for the staffing and the number of judges in a consolidated municipal court district. A study of the court workload prior to the introduction of such legislation would determine whether five or six judges will be needed to handle [p. 74] the consolidated court's 1974 projected workload.

3. It is recommended that whenever a judicial vacancy occurs in a justice court district such district should be consolidated with the municipal court district, except, however, that if a vacancy occurs in the San Ardo or Greenfield Justice Court District prior to a vacancy in the King City Justice Court District the district or districts with a vacancy should be consolidated with the King City District.

The recommendation to consolidate the lower courts into a countywide municipal court district with sessions as indicated takes into consideration geographical locations and judicial workloads, as well as the objectives declared in Government Code Section 71042 for the creation of a greater number of full-time judicial offices, equalizing the work of the judges, expediting judicial business, and improving the administration of justice.

Six of the seven justice courts in the county have workloads for about .2 of a judge or less. The Pacific Grove court is only minutes away from the court in Monterey and the Gonzales and Soledad courts are 20 to 30 minutes from both Salinas and King City. King City, where sessions are recommended is only 10 minutes from Greenfield and about 20 minutes from San Ardo and could therefore conveniently serve these areas.

The Castroville-Pajaro Justice Court District with a workload equivalent for about one-half judge has no incorporated cities. Salinas and Monterey are only 10 and 15 minutes distant [p. 75] respectively, from Castroville and could conveniently serve the Castroville-Pajaro area.

It is also noted that in the seven justice courts 80 to 94 percent of the courts' nonparking filings are for traffic violations.[5] Traffic matters generally are terminated by bail forfeiture and most frequently involve violations on the highways by persons traveling through the district in which they are cited. The relatively few local people who have business with the courts would be provided reasonably accessible court services at the court locations which are recommended.

F. GENERAL EFFECTS

If the foregoing recommendations are followed the number of judicial districts would eventually be reduced from 9 to 1 and the number of court locations from 9 to 3.

The concentration of judicial business at fewer locations would be a convenience to those who appear most frequently in court – district attorneys, public defenders, probation officers, private attorneys, etc. It may also be a convenience for most defendants and litigants to appear in court in the larger cities of Salinas and Monterey.

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[5] Percentage of court filings for ordinary traffic and selected traffic violations: Castroville-Pajaro, 92%; Pacific Grove, 80%; Gonzales, 91%; Soledad, 83%; Greenfield, 90%; King City, 92%; San Ardo, 94%.

Arraignments, hearings and trials of defendants in custody in the county jail could be conducted in Salinas and thereby avoid many transportation and security problems. Those [p. 76] defendants held pending arraignment in city jails located in the Monterey Peninsula area could be arraigned in Monterey.

Centralized courts would necessitate some of the police officers from cities south of Salinas traveling from their cities to appear in court as witnesses. Since the travel time involved is not great and such appearances would be infrequent, this should not cause serious police problems; moreover, some time would be gained by the police not having to transport prisoners for arraignments.

The proposed consolidation would eliminate the office of constable and thus all fees collected would go into the General Fund in lieu of the present arrangement. The sheriff's office, which is also the marshal's office, could easily provide bailiff services to the court, transport prisoners and serve all civil process. Greater efficiency and better services could be obtained from a smaller expenditure of funds.

Savings could be effected by eliminating the present budget for justice court judges' salaries. The 1972-73 justice court budgets include a total of $82,920 for judges' salaries. The total workload of the justice court judges was equivalent to the workload for 1.5 municipal court judges. The annual salary of two municipal court judges is $66,962.

The elimination of six court locations would also result in direct savings in several budget items.

The centralization of jury trials in fewer locations would enable the courts to make more effective use of jurors [p. 77] and would require fewer prospective jurors to be called, with consequent savings to the public that are not reflected in the budget.

The concentration of court personnel in fewer locations would increase efficiency by making it more feasible to have specialization in the use of personnel and provide better in-service training. Likewise, the higher volume of business in a consolidated court would justify the use of more sophisticated office equipment, including the possible use of electronic data processing.

Further savings would result from the consolidation in that other government agencies, such as the district attorney's office and the public defender's office would have fewer courts in which to appear and hence would be able to manage their workloads more efficiently and effectively.

In general, the centralization of management and administration resulting from consolidation should benefit all areas of court operations, including budgeting, clerk's office, calendaring, distribution of workload, uniformity of procedures, etc., and should result in improved court services at less cost.

G. IMPLEMENTATION

As a prerequisite to the consolidation of judicial districts the board of supervisors must hold a public hearing on the matter with at least 15 days' notice by publication

in a newspaper of general circulation in the county.[6] The [p. 78] consolidation is effected by the adoption of an appropriate ordinance by the board.

In order to consolidate the municipal courts and provide the consolidated court with the necessary judges and staff two alternative procedures may be followed. Each requires state legislation to amend the Government Code provisions pertaining to the municipal courts in Monterey County. The legislation would provide for the number of judges, the staffing of the court and staff salaries.

The board could first enact an ordinance consolidating the two municipal court districts into a single municipal court district, with the ordinance to become effective upon the effective date of legislation providing for such a court.

The other alternative is for the state statute to provide that it should become effective upon the effective date of a county ordinance consolidating the courts.

In the event the board of supervisors proposes to consolidate a justice court in which there is no judicial vacancy with the municipal court, legislation could provide for the creation of a position at the desired level in the municipal court clerk's office to which the justice court judge can succeed if he so elects. (See, *e.g.*, Gov. Code § 74343.6 – pertaining to San Diego Municipal Court and National City Justice Court.)

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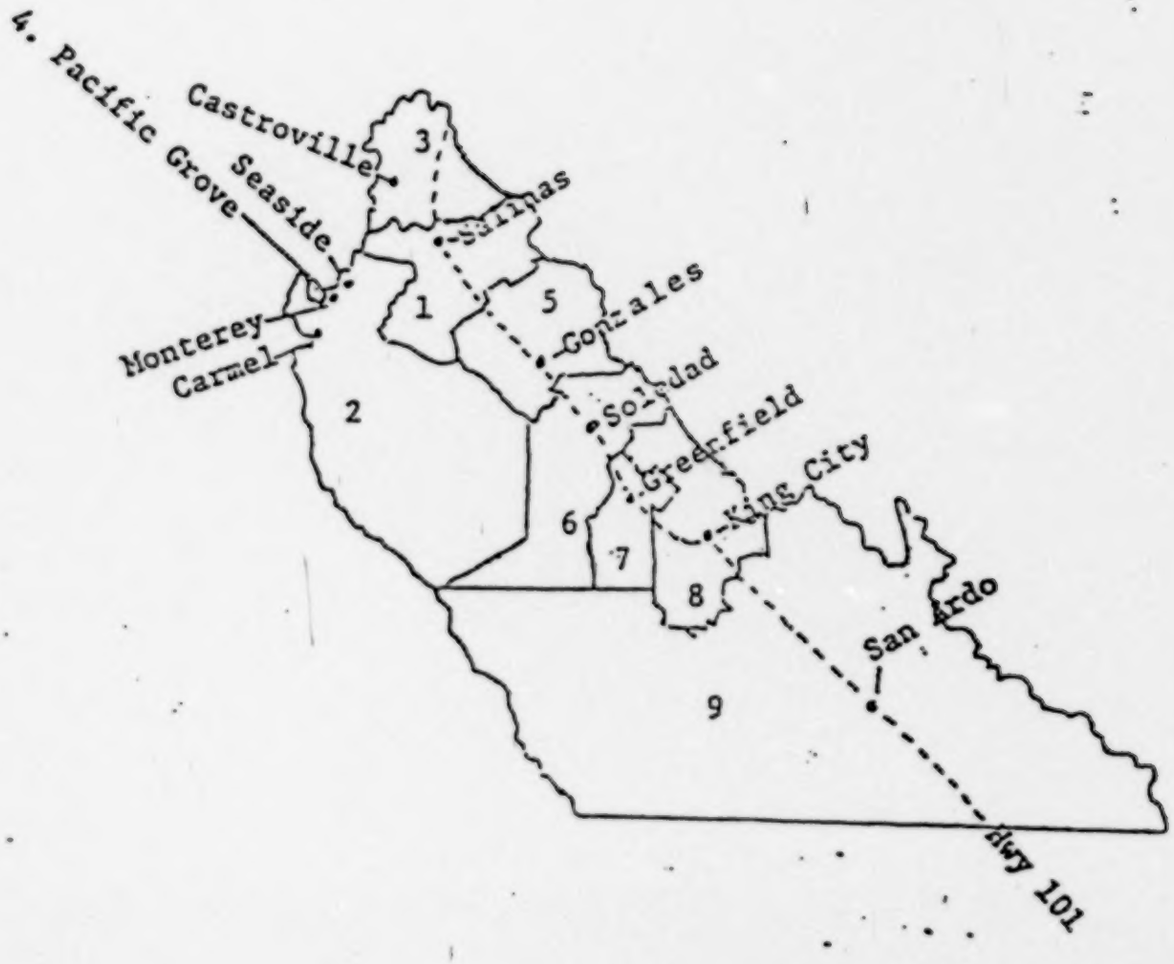
[6] Gov. Code § 71042.

It should also be noted that Government Code Section 72400 states that "The judges of a municipal court having three or more judges may appoint one traffic referee who shall hold [p. 79] office at the pleasure of the judges. A traffic referee shall serve his court full time or, if appointed to serve two or more courts, sufficient time with each to total full time. A person is ineligible to be a traffic referee unless he is a member of the State Bar of California or has had five years' experience as a justice court judge in this state within the eight years immediately preceding his appointment as a traffic referee."

MONTEREY COUNTY

Existing Judicial Districts



1. Salinas Municipal Court District.
2. Monterey-Carmel Municipal Court District.
3. Castroville-Pajaro Justice Court District.
4. Pacific Grove Justice Court District.
5. Gonzales Justice Court District.
6. Soledad Justice Court District.
7. Greenfield Justice Court District.
8. King City Justice Court District.
9. San Ardo Justice Court District.

EXHIBIT A
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Table 5

California Judicial Districts
As of June 30, 1953 to June 30, 1990

Year	Total judicial district	No. of justice courts	No. of municipal courts
1953	400	349	51
1954	400	348	52
1955	395	342	53
1956	395	341	54
1957	393	335	58
1958	390	329	61
1959	374	312	62
1960	374	307	67
1961	371	302	69
1962	370	298	72
1963	365	293	72
1964	361	288	73
1965	349	276	73
1966	339	268	71
1967	336	263	73
1968	326	253	73
1969	319	245	74
1970	319	244	75
1971	309	232	77
1972	303	226	77
1973	297	221	76
1974	291	214	77
1975	279	199	80
1976	259	175	84
1977	200	111	89
1978	197	107	90
1979	191	102	89
1980	183	100	83
1981	178	94	84
1982	179	95	84
1983	174	89	85
1984	169	84	85
1985	168	83	85
1986	169	83	86
1987	166	79	87
1988	164	76	88
1989	153	65	88
1990	149	57	92

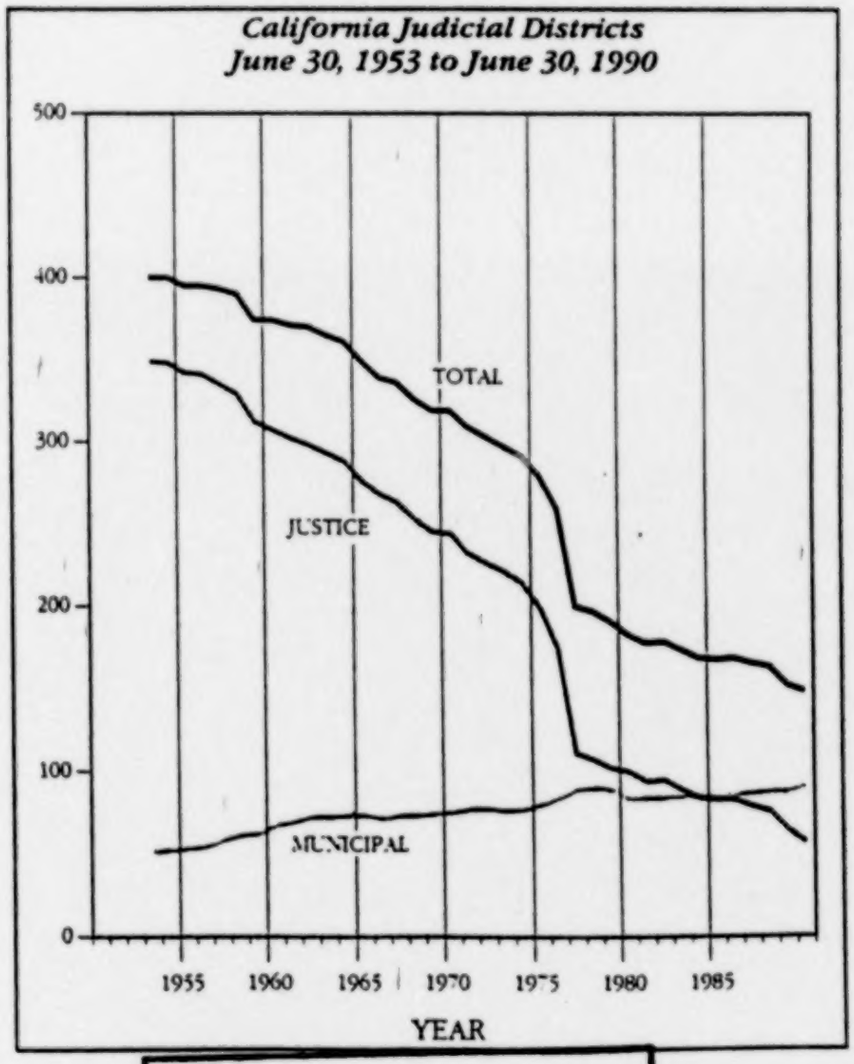

EXHIBIT 1
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Attorneys for Defendant,
MONTEREY COUNTY, CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,

Plaintiffs,

vs.

MONTEREY COUNTY, CALIFORNIA; STATE OF CALIFORNIA,

Defendants,

STEPHEN A. SILLMAN, in his official capacity as Presiding Judge of the Monterey County Municipal Court District,

Intervenor.

_____/

Case No.
C-91 20559 RMW(EAI)

DEFENDANT MONTEREY COUNTY, CALIFORNIA'S, ANSWER TO FIRST AMENDED COMPLAINT

The Defendant, MONTEREY COUNTY, CALIFORNIA, ("MONTEREY COUNTY"), answers the Plaintiffs' First Amended Complaint as follows:

1. MONTEREY COUNTY acknowledges that the First Amended Complaint has been filed pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, and seeks declaratory and injunctive relief. MONTEREY COUNTY further acknowledges that pursuant to the express terms of Section 5, a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date of the political subdivision's coverage must be approved pursuant to Section 5. Approval under Section 5 is secured by submitting the change affecting voting to either the United States Attorney General or the United States District Court for the District of Columbia for determination that the proposed change does not have the purpose, and will not have the effect, of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Until such Section 5 approval is secured, no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure. MONTEREY COUNTY further acknowledges that if the United States Attorney General does not interpose an objection within a 60-day period following the submission of the change affecting voting, the change can be implemented in future elections. MONTEREY COUNTY further acknowledges that a covered political subdivision can also implement the change affecting voting in future elections if the political subdivision obtains a declaratory judgment from the United States District Court for the

District of Columbia that the change affecting voting does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. MONTEREY COUNTY further acknowledges that until such Section 5 preclearance is secured, the change affecting voting cannot be implemented or enforced in any elections.

Except as otherwise acknowledged in this paragraph, MONTEREY COUNTY denies having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 1 of the First Amended Complaint, and on this basis denies such allegations.

2. MONTEREY COUNTY admits that the First Amended Complaint makes the allegations contained in paragraphs 2, 3 and 4 of the First Amended Complaint.

3. MONTEREY COUNTY admits that the Plaintiffs are seeking the remedies specified in paragraph 5 of the First Amended Complaint.

4. MONTEREY COUNTY admits the allegations contained in paragraphs 6, 7, 8, 9, and 10, inclusive, of the First Amended Complaint.

5. MONTEREY COUNTY admits that California Government Code sections 25200 and 71040 authorizes counties in the State of California to modify and consolidate municipal and justice court districts. MONTEREY COUNTY further alleges that pursuant to Government Code section 73560, which provides that the entire County of Monterey is included in one Monterey County Municipal Court District, does not allow Monterey

County to modify and consolidate municipal or justice court districts.

6. MONTEREY COUNTY admits the allegations contained in paragraphs 12 through 45, inclusive, of Plaintiffs' First Amended Complaint.

7. In answering paragraphs 46, 47, and 48 of the Plaintiffs' First Amended Complaint, MONTEREY COUNTY alleges that this Court in its April 1, 1993, Order Granting Plaintiffs' Motion for Partial Summary Judgment and Denying Defendants' Motions expressly found that MONTEREY COUNTY is a jurisdiction subject to Section 5 preclearance provisions of the Voting Rights Act and that as such a jurisdiction, MONTEREY COUNTY must submit for preclearance any ordinances which constitute an "election change." In addition, MONTEREY COUNTY alleges that the Court further found that MONTEREY COUNTY ordinances affecting boundaries and organization of various MONTEREY COUNTY municipal court districts and judicial districts constitute election changes subject to Section 5 preclearance and that such ordinances have not been precleared pursuant to Section 5. MONTEREY COUNTY further alleges that the Court stated that such ordinances cannot be implemented by county until such clearance is received. Except as otherwise alleged in this paragraph, MONTEREY COUNTY denies having sufficient knowledge or information to form a belief as to the allegations contained in paragraph 46, 47, and 48 of the First Amended Complaint, and on this basis denies such allegations.

8. MONTEREY COUNTY admits the allegations contained in paragraphs 50 and 51 of Plaintiffs' First Amended Complaint.

9. MONTEREY COUNTY denies that it has sufficient knowledge or information to form a belief as to the allegations contained in paragraph 52 of the First Amended Complaint and on this basis denies such allegations.

10. MONTEREY COUNTY admits the allegations contained in paragraph 53 of the First Amended Complaint.

11. MONTEREY COUNTY realleges paragraphs 1 through 53 above and incorporates the same as its answer and response to paragraph 54 of the First Amended Complaint.

12. MONTEREY COUNTY denies having sufficient knowledge or information to form a belief as to the allegations contained in paragraphs 55 through 59, inclusive, of Plaintiffs' First Amended Complaint, and on this basis denies such allegations.

13. In answering paragraph 60 of the First Amended Complaint, MONTEREY COUNTY realleges paragraphs 1 through 59 above and incorporates the same as its answer and response.

14. MONTEREY COUNTY denies having sufficient knowledge or information to form a belief as to the allegations contained in paragraphs 61 through 63, inclusive, of Plaintiffs' First Amended Complaint, and on this basis denies such allegations.

15. MONTEREY COUNTY as an affirmative defense, alleges that MONTEREY COUNTY is a political subdivision of the State of California, and the actions of MONTEREY COUNTY complained of in the First Amended Complaint were dependent upon affirmation, ratification, approval, or adoption by the State of California. In addition, the statutes of the State of California are binding and enforceable against MONTEREY COUNTY.

WHEREFORE, MONTEREY COUNTY respectfully prays that this Court enter judgment:

1. Denying the relief sought by the Plaintiffs;

2. Holding MC harmless for any damages or costs which may be assessed against MONTEREY COUNTY as a result of MONTEREY COUNTY's compliance with State laws; and

3. Granting such additional relief at law or equity as may be deemed appropriate.

DATED: November 25, 1996.

/s/ Douglas C. Holland
DOUGLAS C. HOLLAND,
County Counsel

Attorney for Defendant,
MONTEREY COUNTY,
CALIFORNIA

PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 years and not a party to the within action. My business address is Courthouse, 240 Church Street, Room 214, Salinas, California.

On the date set forth below, I served a true copy of the following document(s):

DEFENDANT MONTEREY COUNTY, CALIFORNIA'S ANSWER TO FIRST AMENDED COMPLAINT

on the interested parties to said action by the following means:

[X] **(BY MAIL)** By placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, in the United States Mail at the Office of the County Counsel, 240 Church Street, Room 214, Salinas, California, addressed as shown below. I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing.

[ ] **(BY HAND DELIVERY)** By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] **(BY OVERNIGHT DELIVERY)** By placing a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to the Office of the County Counsel, to be delivered by Express Mail, to the address(es) shown below.

[ ] **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy thereof by facsimile transmission from facsimile number (408) 755-5283 to the interested parties to said action at the facsimile number(s) shown below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 25, 1996, at Salinas, California.

/s/ _____
Lisa Tarro

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[p. 8] [logo]

COURTS. SUPERIOR AND MUNICIPAL COURT CONSOLIDATION. LEGISLATIVE CONSTITUTIONAL AMENDMENT

Official Title and Summary Prepared by the Attorney General

COURTS. SUPERIOR AND MUNICIPAL COURT CONSOLIDATION. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Provides for consolidation of superior court and municipal court in county upon approval by majority of superior court judges and of municipal court judges in that county.
- Upon consolidation, the superior court has jurisdiction over all matters now handled by superior and municipal court, municipal court judges become superior court judges, and the municipal court is abolished.
- Makes related changes to constitutional provisions regarding municipal courts.
- Provides for addition of nonvoting members to Judicial Council and lengthens some members' terms.

Summary to Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown net fiscal impact to the state from consolidation of superior and municipal courts. To the extent that most courts choose to consolidate, there would likely be annual net savings in the millions to tens of millions of dollars in the long term.

Final Votes Cast by the Legislature on SCA 4 (Proposition 220)

Assembly:	Senate:
Ayes 58	Ayes 38
Noes 1	Noes 0

[p. 9] Analysis by the Legislative Analyst

[logo]

Background

The California Constitution provides for superior and municipal courts, referred to as the state's "trial courts." Currently, the state and the counties pay for the operation of the trial courts. Recent changes in law require that the state pay for all future increases in operating costs, beginning on July 1, 1997.

Superior courts generally handle cases involving felonies, family law (for example, divorce cases), juvenile law, civil lawsuits involving more than $25,000, and appeals from municipal court decisions. Each of the state's counties has a superior court. Currently, there are 805 superior court judgeships.

Municipal courts generally handle misdemeanors and infractions and most civil lawsuits involving disputes of $25,000 or less. Counties are divided into municipal court districts based on population. Currently, there are 675 municipal court judgeships.

Current law requires trial courts to improve their operations in a variety of ways. For example, judges of either court may hear both superior and municipal court

cases and staff can be shared between the superior and municipal courts within a county.

Proposal

Trial Court Consolidation. This proposition, a constitutional amendment, permits superior and municipal courts within a county to consolidate their operations if approved by a majority of the superior court judges and a majority of municipal court judges in the county. If the judges approve consolidation of the courts, the municipal courts of the county would be abolished and all municipal court judges and employees would become superior court judges and employees.

A consolidated superior court would have jurisdiction in all matters that currently fall under the jurisdiction of either the superior or municipal courts. A consolidated superior court would have an appellate division to handle misdemeanors and infractions and most civil lawsuits involving disputes of $25,000 or less that are currently appealed from a municipal court to a superior court. The Legislature can change these amounts thereby changing the appeal jurisdiction.

Other Changes. The proposition makes a number of other related and conforming changes to the Constitution with respect to the minimum qualifications and election of judges in consolidated courts. In addition, the measure makes: (1) related and conforming changes to the membership of the Commission on Judicial Performance, which handles complaints against judges; and (2) related, conforming, and other minor changes to the membership

and terms of the California Judicial Council, which oversees and administers the state's courts.

Fiscal Effect

The fiscal impact of this measure on the state is unknown and would ultimately depend on the number of superior and municipal courts that choose to consolidate. To the extent that most courts choose to consolidate, however, this measure would likely result in net savings to the state ranging in the millions to the tens of millions of dollars annually in the long term. The state could save money from greater efficiency and flexibility in the assignment of trial court judges, reductions in the need to create new judgeships in the future to handle increasing workload, improved management of court records, and reductions in general court administrative costs. At the same time, however, courts that choose to consolidate would result in additional state costs from increasing the salaries and benefits of municipal court judges and employees to the levels of superior court judges and employees. These additional costs would partially offset the savings.

[p. 65] **Proposition 220: Text of Proposed Law**

This amendment proposed by Senate Constitutional Amendment 4 (Statutes of 1996, Resolution Chapter 36) expressly amends the Constitution by adding a section thereto and amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLES I AND VI

First – That Section 16 of Article I thereof is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ *other than causes within the appellate jurisdiction of the court of appeal* the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second – That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts. ~~All courts~~, *all of which* are courts of record.

Third – That Section 4 of Article VI thereof is amended to read:

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is ex officio clerk of the superior court in the county.~~

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth – That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each municipal court shall have one or more judges. Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.

(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attachés, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full

time and shall be available for assignment [p. 66] by the Chief Justice for the balance of time necessary to comprise a full-time workload.

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts. It shall prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.

(d) Notwithstanding subdivision (a), any city in San Diego County may be divided into more than one municipal court district if the Legislature determines that unusual geographic conditions warrant such division.

(e) Notwithstanding subdivision (a), the municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there shall be only a superior court.

Fifth – That Section 6 of Article VI thereof is amended to read:

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, ~~and~~ 5 judges of municipal courts, 2 *nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council,* each appointed by the Chief Justice for a ~~2-year~~ *3-year* term *pursuant to procedures established by the council;* 4 members of the State Bar appointed by its governing body for ~~2-year~~ *3-year* terms; and one member of each house of the Legislature appointed as provided by the house. *Vacancies in the*

memberships on the Judicial Council otherwise designated for municipal court judges shall be filled by judges of the superior court in the case of appointments made when fewer than 10 counties have municipal courts.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, ~~not inconsistent with statute~~; and perform other functions prescribed by statute. *The rules adopted shall not be inconsistent with statute.*

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the ~~Judicial Council~~ *council* as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Sixth – That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a court of appeal, one judge of a superior court, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the Governor; and 6 citizens who are not judges, retired judges, or members of the State Bar of California, 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly. Except as provided in ~~subdivision~~ *subdivisions (b) and (c)*, all terms are for 4 years. No member shall serve more than 2 4-year terms, or for more than a total of 10 years if appointed to fill a vacancy. *A vacancy in the membership on the Commission on Judicial Performance otherwise designated for a municipal court judge shall be filled by a judge of the superior court in the case of an appointment made when fewer than 10 counties have municipal courts.*

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. Appointing powers may appoint members who are

already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.

~~(b)~~

(c) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Seventh – That Section 10 of Article VI thereof is amended to read:

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. *The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

Superior courts have original jurisdiction in all *other* causes except those given by statute to other trial courts.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Eighth – That Section 11 of Article VI thereof is amended to read:

SEC. 11. *(a)* The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction *in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,* and in other causes prescribed by statute. *When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.*

~~Superior Courts have~~

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in

causes prescribed by statute ~~that arise in municipal courts in their counties~~.

(c) The Legislature may permit ~~appellate~~ courts *exercising appellate jurisdiction* to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Ninth – That Section 16 of Article VI thereof is amended to read:

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to [p. 69] an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

~~(b) Judges of other~~

(b)(1) In counties in which there is no municipal court, judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(2) In counties in which there is one or more municipal court districts, judges of superior and municipal courts shall

be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the *second* January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

Tenth – That Section 23 is added to Article VI thereof, to read:

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the June 2, 1998, primary election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become

unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(7) Penal Code Procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

Eleventh – That if any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the

invalid provision or application, and to this end the provisions of this measure are severable.

No. 97-1396

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants*,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO AFFIRM

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APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO AFFIRM

The State of California misstates the issue before this Court. The question is not whether §5 of the Voting Rights Act applies to the State. Rather, the quite simple question is whether a covered jurisdiction's voting changes, regardless of subsequent legislative enactments, can be implemented without §5 preclearance.

Appellee devotes much attention to the unremarkable and uncontested notion that the State of California possesses the

authority to organize and prescribe the power of municipal courts. Motion to Affirm ["Mot."] at 5-8. But, for purposes of §5, that proposition is immaterial. This Court already has determined that Monterey County's county-wide municipal court system, dependent upon antecedent County ordinances, is subject to, but has not received approval under, §5. *Lopez v. Monterey County,* 117 S.Ct. 340, 345 (1996).

Nonetheless, in a transparent attempt to convert this straightforward §5 coverage case into a broad-based threat to state sovereignty, the State persists in protesting that it cannot be held subject to the preclearance requirements of §5. This Court should disregard that distraction as Appellants do not contend that the State itself is covered by §5. Instead, the Court's analysis must determine whether the covered County has "enacted" or "administered" a voting change without obtaining preclearance. Knowing that the answer to this plain language inquiry must be in the affirmative, the State rewrites §5 by substituting the word "initiate" for the statutory language of "enact" or "administer." *See, e.g.*, Mot. at 13. This Court must reject the State's attempt to alter the express terms of §5.

I. THE CREATION OF THE CURRENT COUNTY-WIDE COURT IS DEPENDENT UPON ANTECEDENT, UNPRECLEARED COUNTY ORDINANCES

The State argues that the current county-wide municipal court system is administered pursuant to state statute. Assuming *arguendo* the truth of that statement, the relevant and undisputed fact is that, without being subjected to §5 preclearance, Monterey County ordinances *established* the county-wide district.

An examination of the ordinances reveals that the judicial district consolidation process was originated and driven by Monterey County, not the State. J.S. 22. "Between 1972 and

1983, the County adopted six ordinances, which ultimately merged the seven justice court districts and the two municipal court districts into a single, county-wide municipal court." *Lopez* 117 S.Ct. at 344. While it is true that various pieces of state legislation also were directed at Monterey County's judicial system, this Court found that several of these laws actually "reflected changes in the County's judicial districts *resulting from the consolidation process*." *Id.* (emphasis added).

Moreover, none of the state statutes by themselves ever mandated the creation of a county-wide municipal court district. The 1979 statute, Cal. Stats. ch. 694, only created a single municipal court district which did not encompass the entire county.[1] J.S. App. 33.[2] Monterey County Ordinance 2930 consolidated the remaining districts into a single county-wide municipal court district.[3] J.S. App. 79.

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[1] Even the 1979 statute reflected the County's policy choices. Prior to the enactment of that statute, County Ordinance No. 2524 had consolidated the same three municipal court districts into one district. J.S. 16.

[2] The subsequent state statutes also did not establish a county-wide municipal court district. All of the statutes related to the number of judges assigned to the municipal court: Cal. Stats. 1983, ch. 1249, J.S. App. 35; Cal. Stats. 1985, ch. 659, J.S. App. 37; Cal. Stats. 1987, ch. 1211, J.S. App. 38 - 39; Cal. Stats. 1989, ch. 608, J.S. App. 40; Cal. Stats. 1993, ch. 1091, J.S. App. 42. The 1989 statute, although recognizing that there was a county-wide district in Monterey County, cannot be interpreted as establishing such a district. J.S. App. 8 (District Court held that 1989 statute did not establish a county-wide district).

[3] The State attaches great significance to the fact that Monterey County Ordinance 2930 received Section 5 preclearance. The Supreme Court recognized that the

In fact, the state statutes alone are meaningless. The statutes did not define the boundaries of the judicial districts. Rather, the boundaries were defined by the various county ordinances. This fact is significant for two reasons. First, the absence of any boundary descriptions of the judicial district consolidations indicates that the statutes were not the exclusive legislative mechanism for the consolidations of judicial districts resulting in a county-wide district. The statutes need to be read in conjunction with the county ordinances. Second, the boundary changes occasioned by the county ordinances have yet to receive the necessary Section 5 preclearance. *Lopez*, 117 S.Ct. at 345. To the extent that the state statutes reflected these boundary changes, the statutes must also receive Section 5 approval.[4] This review of the relevant statutes and ordinances is fatal to Appellee's contention that the sole authority for conducting county-wide elections is the state's statutory scheme.

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establishment of the county-wide municipal court district was the result of a series of judicial district consolidations. *Lopez,* 117 S.Ct. at 344. And the Supreme Court also recognized that the previous consolidation ordinances cannot be deemed to have received Section 5 approval merely because the final consolidation ordinance received the requisite Section 5 preclearance. *Id.,* at 345. For this reason, the Supreme Court directed Monterey County to seek approval of these antecedent county ordinances.

[4] Changes in the size and composition of voting constituencies are changes subject to Section 5 preclearance. *Perkins v. Mathews,* 400 U.S. 379, 394 (1971) (change from district election to at-large election subject to Section 5 approval). *See also* 28 C.F.R. § 51.13 (e) (changes subject to Section 5 preclearance include "... changing to at-large elections from district elections, or changing to district elections from at-large elections....").

The State's argument is further undermined by its own recitation of the chronology subsequent to the recommendations of the State's Judicial Council. *See* Mot. 6-8. The State suggests that, given the recommendations of the Judicial Council, the county-wide district must be viewed as the result of state-mandated changes. Yet the State acknowledges that the Council's statutory function is only to *recommend* consolidation of judicial districts. *Id.* Thus, the County was under no legal compulsion to adopt the consolidation ordinances.

This Court need only determine whether the establishment of the county-wide district incorporated voting changes subject to §5. 42 U.S.C. § 1973c. And the record is clear that the county-wide system was established over a period of time through a series of judicial district consolidations. These consolidations changed the size and racial and ethnic composition of the voting constituencies located within the various judicial districts. Thus, each of the county ordinances and those state statutes reflecting these judicial district consolidations are subject to Section 5 preclearance.

II. APPELLEE'S PROFERRED INTERPRETATION WOULD FRUSTRATE THE PLAIN LANGUAGE OF SECTION 5

Even if the county-wide election system were solely the product of mandated state legislation, Monterey County, as a covered jurisdiction, would be required to submit the election changes for preclearance prior to their implementation. The state disputed this proposition by conflating the distinct statutory terms "enact" and "administer" into a single term -- "initiate." Mot. at 13-17. The State would have this Court hold that when Congress referred to a voting change in §5, it meant only those changes "initiated" by the covered jurisdiction. But, as reflected in the actual language of the statute, Congress' concerns were clearly broader. Contrary to the State's

proferred interpretation, §5 does not focus on the branch of government (legislative or executive) in which a voting change is initiated. *See* Mot. at 14-15. Indeed, if Congress wanted to address the notion that §5 voting changes applied distinctively to "legislative" and "executive" actions, it would have employed those easily understood terms. But Congress was not concerned about the source (legislative vs. executive or state vs. local) of the voting change. Congress wanted to prevent discriminatory voting changes whether initiated, *i.e.*, "enacted," *or* "administered" by a jurisdiction subject to §5. Its focus was on the covered jurisdiction and whether its voting practices were being changed. If so, as here, the change was subject to §5 and could not be implemented without preclearance.

In its earlier decision in this case, the Court essentially acknowledged the propriety of Appellants' interpretation and its focus on whether there has been a voting change in the covered jurisdiction, and not on the source of that change. In rejecting the State's prior argument that the District Court could order the County to conduct elections under the unprecleared, at-large system, this Court reflected on §5's plain language mandate: "A jurisdiction subject to § 5's requirements must obtain either judicial or administrative preclearance before *implementing* a voting change. *No new voting practice is enforceable* unless the covered jurisdiction has succeeded in obtaining preclearance." *Lopez*, 117 S.Ct. at 347 (citations omitted) (emphasis added). Simply stated, §5's mandate is directed at the implementation of voting changes in covered jurisdictions.

This Court's analysis in *United States v. Board of Comm'rs of Sheffield*, 435 U.S. 110 (1978), lends support to this plain language construction. *Sheffield* addresses the interplay between covered and noncovered jurisdictions in determining the scope of §5's preclearance requirements. Although *Sheffield* involved the application of §5 to a city within a covered state,

the Court's rationale was that a covered jurisdiction should not be able to avoid the reach of §5 by encouraging the noncovered jurisdiction to adopt the voting change. *Sheffield*, 435 U.S. at 125. That rationale applies with equal force to the instant circumstance. *See* Brief for the United States as Amicus Curiae 13-16 (describing practice of "local courtesy" by which state legislators routinely approve locally applicable legislation sponsored by local jurisdiction's legislative delegation).

In *Dougherty County Bd. of Educ. v. White,* 439 U.S. 32 (1978), the Court relied upon *Sheffield* in rejecting an argument, analogous to the District Court's rationale here, that a jurisdiction must exercise its own control over a voting change before §5 is implicated. In *Dougherty County*, the County sought to distinguish *Sheffield* by arguing that, since its local Board of Education did not "exercise control" over the voting process, *Sheffield*, 435 U.S. at 127, it was not subject to §5. This Court rejected that "cramped reading," emphasizing that §5 is directed at "the impact of a change on the electoral process, not to the duties of the political subdivision that adopted it." *Dougherty County,* 439 U.S. at 44-45. That analysis supports the plain language construction of §5 that focusses simply on whether a covered jurisdiction implements a voting change without regard to its legislative source.

Conclusion

For the reasons stated herein and in the Jurisdictional Statement, the Court should summarily reverse the judgment of the District Court. Alternatively, the Court should note probable jurisdiction.

Dated: April 4, 1998

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No. 97-1396

In the Supreme Court of the United States

OCTOBER TERM, 1997

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v.

MONTEREY COUNTY, CALIFORNIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANTS

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QUESTION PRESENTED

Whether a county covered by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, may administer voting changes put in place by county ordinances without obtaining either administrative or judicial preclearance of those changes, on the ground that the State, which is not covered by Section 5, enacted those changes into a state statute.

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INTEREST OF THE UNITED STATES

This case involves the construction of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. Whenever a jurisdiction covered by Section 5 "shall enact or seek to administer" any change in voting practices or procedures, it must obtain either administrative preclearance from the Attorney General or judicial preclearance from the United States District Court for the District of Columbia for that change. The Attorney General has the responsibility for administering the administrative preclearance process of Section 5 and is authorized to bring suit to enjoin the implementation of unprecleared voting changes. The decision in this case may substantially affect the Attorney General's administrative and enforcement responsibilities under Section 5. The United States has participated in this case as *amicus curiae* in the proceedings in the

district court, on the prior appeal to this Court, see *Lopez* v. *Monterey County*, 117 S. Ct. 340 (1996), and in support of appellants' application for a stay of the district court's judgment pending the present appeal.

STATEMENT

1. Much of the procedural history of this case is set forth in the Court's prior opinion in the case, *Lopez* v. *Monterey County*, 117 S. Ct. 340 (1996). In 1971, the Attorney General designated Monterey County, California, as a covered jurisdiction under Sections 4(b) and 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973b(b) and 1973c. As a consequence, Section 5 of the Act requires the County to obtain either administrative or judicial preclearance of any voting practice in the County different from the practices in effect on November 1, 1968. *Lopez*, 117 S. Ct. at 343. The State of California is only partially covered by Section 5; it is not covered as a State, but several political subdivisions within the State are covered. See 28 C.F.R. Pt. 51, App.

On November 1, 1968, the County had nine inferior court districts. Two of the districts were municipal court districts, each served by two judges. The other seven court districts were justice districts, each served by a single judge. Each of the municipal and justice courts operated separately and independently. Judges for each court were elected at large by the voters of their respective districts, and they served only the judicial district in which they were elected. *Lopez*, 117 S. Ct. at 343-344.

Between 1972 and 1983, the County adopted a series of court consolidation ordinances, which ultimately merged the seven justice court districts and the two municipal court districts into a single, county-wide municipal court, served by nine judges whom Monterey County residents elected at large. The County did not seek Section 5 preclearance of any of the consolidation ordinances. *Lopez*,

117 S. Ct. at 344. The State of California also enacted legislation directed at various aspects of Monterey County's judicial system, including consolidation of court districts and appointment and compensation of court personnel. *Ibid.* (citing Cal. Gov't Code tit. 8, ch. 10 (§§ 73300-74999) (West 1993)). Some of these laws have reflected changes in the County's judicial districts resulting from the consolidation process. *Ibid.* For example, on June 5, 1979, the Monterey County Board of Supervisors adopted Ordinance No. 2524, which consolidated the Monterey Peninsula Judicial District, the North Monterey County Judicial District, and the Salinas Judicial District into a single municipal court district, the Monterey County Municipal Court District. J.S. App. 75. Later that year, the State also enacted that consolidation into state law when the California legislature amended Section 73560 of the California Government Code. That 1979 amendment of the state code was never precleared. See *id.* at 6, 32-33.

In 1983, the State submitted to the Attorney General for preclearance legislation that included the county ordinance that consolidated the last two justice court districts with the remaining municipal court district. *Lopez*, 117 S. Ct. at 344. The State did not, however, bring the previous consolidations to the Attorney General's attention. This Court held that the effect of the Attorney General's failure to object to the 1983 legislation was to preclear the final consolidation, but not the previous ones. *Id.* at 345.

2. On September 6, 1991, appellants, Hispanic voters in Monterey County, brought this action in the United States District Court for the Northern District of California. Appellants alleged that the County was in violation of Section 5 by holding judicial elections under ordinances that had never received either administrative or judicial preclearance. On March 31, 1993, the district court held that the consolidation ordinances were election changes

that had not been precleared as required by Section 5, and it directed the County to seek preclearance. The County then brought a judicial preclearance action in the United States District Court for the District of Columbia, but it voluntarily dismissed that action after stipulating that it was unable to show that the ordinances did not have a retrogressive effect on Hispanic voters. *Lopez*, 117 S. Ct. at 345.

After the State intervened in this case and further proceedings revealed that all the parties could not agree on a new election plan, the district court, on December 20, 1994, adopted on an interim basis one of the plans that the County and appellants had proposed. That plan contained three single-judge districts in which Hispanics constituted a majority of the population, and a fourth district that would elect seven judges. The Attorney General precleared the plan for use on an interim basis, and it was used in a June 1995 special election of seven judges. See *Lopez*, 117 S. Ct. at 346.

Shortly after the June 1995 election, this Court decided *Miller* v. *Johnson*, 515 U.S. 900 (1995), in which it held that a congressional redistricting plan for the State of Georgia violated the Equal Protection Clause. After that decision, the district court reconsidered its interim election plan. *Lopez*, 117 S. Ct. at 346. Finding that *Miller* had cast doubt on the constitutionality of the interim plan, the court ordered the County to hold the next judicial election in March 1996 as an at-large, county-wide election—the very scheme that appellants had originally challenged under Section 5 as unprecleared. *Ibid.*

3. This Court reversed, and held that the district court did not have authority to order elections pursuant to ordinances that had not been precleared under Section 5. *Lopez*, 117 S. Ct. at 348. The Court rejected the State's argument that the plan for at-large elections in March

1996 did not have to be precleared because it had been adopted pursuant to the district court's equitable remedial authority. The Court explained that, "where a court adopts a proposal reflecting the policy choices of the people in a covered jurisdiction[,] the preclearance requirement of the Voting Rights Act is applicable." *Ibid.* (internal quotation marks, ellipses, and brackets omitted). The Court concluded that preclearance was necessary here because the "at-large, county-wide system under which the District Court ordered the County to conduct elections undoubtedly reflected the policy choices of the County; it was the same system that the County had adopted in the first place." *Ibid.* (internal quotation marks and brackets omitted).

The State also contended on the previous appeal in this case that "intervening changes in California law have transformed the County's judicial election scheme into a state plan. Therefore, assert[ed] the State, the County is not administering County consolidation ordinances, * * * but is merely implementing California law, for which § 5 preclearance is not needed." *Lopez*, 117 S. Ct. at 347. This Court declined to address that contention; it noted that the district court had not conclusively determined the issue and had stated that it would allow the State to "continue to seek to show that the County was merely administering California law." *Ibid.* The Court therefore left that issue, along with several others that the lower court had not yet addressed, to be resolved on remand. *Ibid.* The Court stressed, however, that "[t]he County has not discharged its obligation to submit its voting changes to either of the forums designated by Congress," and it admonished that "[t]he requirement of federal scrutiny should be satisfied without further delay." *Id.* at 349.

4. On remand, the State filed a motion to dismiss, arguing that, "although the consolidation ordinances were not submitted for preclearance, intervening changes in California law have converted the County's judicial election scheme into a state plan thus negating the need for preclearance." J.S. App. 3. The district court agreed and dismissed appellants' complaint. The district court concluded that, even though a number of county ordinances had consolidated judicial districts before passage of the 1979 state statute amending Section 73560, "by [that amendment], the State clearly dictated that Monterey County would have a single municipal court district." *Id.* at 7. Furthermore, the court stated, the State had continued to change the County's court system in subsequent enactments—for example, a state statute in 1983 had increased the number of judges in the County court system, contingent on the County's consolidation of municipal and justice courts (which was done by county ordinance in 1983, and was precleared by the Department of Justice), and a state constitutional amendment in 1995 had converted justice courts to municipal courts. *Id.* at 7-8. Thus, the court reasoned, "the justice courts as they existed prior to consolidation could not exist today." *Id.* at 8.

The court rejected appellants' argument that, even though the State had enacted various statutes regarding county-wide judicial election districts, nonetheless Section 5 still required preclearance because the County "seek[s] to administer" those voting changes, within the meaning of Section 5, by holding elections under the state plans. The court acknowledged that in *Young* v. *Fordice*, 117 S. Ct. 1228 (1997), this Court held that Mississippi, which is covered by Section 5, was required to obtain preclearance of voting changes that it intended to administer in order to comply with another federal statute. But in the present case, the court stated, appellants "are not objecting to any particular procedural plan by which the County intends to administer voting for a county-wide district. They are objecting to the consolidation itself." J.S. App. 9. And, the court reasoned, "[a]lthough neither the Voting Rights Act nor any case specifically defines 'seek[s] to administer,' it is clear that it must involve some exercise of policy choice and discretion by the covered jurisdiction. The County, as a subordinate jurisdiction of the State, lacks the discretion to choose a voting plan that does not involve a county-wide district." *Ibid.* (citation omitted).

The district court vacated its previous orders extending the terms of the incumbent judges and enjoining elections under the unprecleared ordinances. J.S. App. 9-10. On January 23, 1998, this Court issued a stay of the district court's order. J.S. 7.

ARGUMENT

The district court has held in this case that a local jurisdiction covered by Section 5 of the Voting Rights Act need not obtain preclearance under the Act of changes in voting procedures that it administers if the voting change is also enacted into legislation by a State that is not, as a State, covered by Section 5. That decision is contrary to the plain language of Section 5, which requires preclearance whenever a covered political subdivision *either* enacts or "seek[s] to administer" a voting change. The fact that the State enacted laws requiring the consolidation of the judicial districts did not obviate the County's obligation to preclear these changes when it sought to administer the changes by consolidating the districts. Furthermore, the district court's reasoning that the voting changes at issue in this case did not reflect the policy choices of the County (which adopted ordinances providing for the judicial district consolidations) but rather those of the State (which also enacted those consolidations into law) is clearly incorrect, and is contrary to this Court's

determination on the previous appeal in this case that the voting changes did reflect the policy choices of the County. *Lopez* v. *Monterey County*, 117 S. Ct. 340, 348 (1996). And the district court's judgment, if not reversed, could have serious and adverse implications for the effectiveness of Section 5, for it suggests that local jurisdictions can escape the coverage of Section 5 simply by having state entities enact county voting changes into state law. Accordingly, this Court should reverse the judgment of the district court.

1. a. Section 5 of the Voting Rights Act of 1965 provides, in pertinent part:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in [Section 4(a) of the Act] based upon determinations made under the first sentence of [Section 4(b) of the Act] are in effect *shall enact or seek to administer* any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on * * * November 1, 1968, * * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, [or membership in a language minority group] * * * *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission.

42 U.S.C. 1973c (first emphasis added). Section 5's preclearance requirements are triggered whenever a covered jurisdiction "enact[s]" *or* "seek[s] to administer" "any" voting change. The language is not limited to situations—as the district court seemed to believe—in which a covered jurisdiction "seek[s] to administer" a voting change that it has enacted itself. To the contrary, the plain language of Section 5 encompasses the situation in which a covered political subdivision "seek[s] to administer," in that subdivision, a voting change that has been enacted into legislation by the legislature of a State that is not, as a State, covered by the Act.

First, the preclearance requirements of Section 5 apply to any covered "State or political subdivision." The legislative background of the Act reflects that Congress specifically intended to define "political subdivision" as areas of a nondesignated State, to ensure that voting changes in such jurisdictions receive scrutiny under the Act. See *United States* v. *Board of Comm'rs of Sheffield*, 435 U.S. 110, 128-129 (1978). Because Monterey County is covered by Section 5, under the plain terms of the Act it must obtain federal preclearance before it implements "any" voting procedure "different from that in force or effect" in the County on November 1, 1968.

Second, preclearance is required whenever a covered political subdivision shall "enact or seek to administer" a voting change. Congress's use of the disjunctive is presumed to have intended that those terms have different meanings in the statute. See *Bailey* v. *United States*, 516 U.S. 137, 145-146 (1995). That intent is consistent with differences in the ordinary meanings of "enact" and "administer." The term "enact" ordinarily refers to the process by which a legislative body votes a bill into law. See

Black's Law Dictionary 472 (5th ed. 1979) (defining "enact" as "[t]o establish by law" and "enactment" as "[t]he method or process by which a bill in the Legislature becomes a law"); *Webster's Third New International Dictionary* 745 (3d ed. 1986) (def. 2 of "enact": "to establish by legal and authoritative act: make into law; *esp.*: to perform the last act of legislation upon (a bill) that gives the validity of law"). The term "administer," however, is not so limited, and it frequently refers to the implementation of an established legal requirement. See *id.* at 27 (def. 1a(2) of "administer": "to direct or superintend the execution, use, or conduct of"; as in "[administered] the regulations governing interstate travel"). Under the plain language of Section 5, therefore, a covered political subdivision "seek[s] to administer" a voting change when it enforces or implements a law enacted by the legislature of a State that is not covered by Section 5, and that subdivision is required to obtain preclearance for its administration of such a law.[1]

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[1] Somewhat different considerations apply when a political subunit of a State administers a voting law enacted by the legislature of a State that is covered by Section 5. In those situations, the State must obtain preclearance of the voting change before it can be implemented. If the voting change enacted by the State is precleared, and if the subdivision has no discretion under state law to deviate from the enacted voting change, then the subdivision need not also obtain preclearance before it is implemented. Once the state enactment has been precleared, its implementation by the subdivision does not involve a "change" in voting practices. For example, if a covered State were to enact a voting law changing the hours during which polling places are open, without affording subdivisions discretion to deviate from that rule, and if that enactment were precleared, the law would not also have to be precleared by each subunit that implemented the law. Cf. *City of Monroe* v. *United States*, 118 S. Ct. 400, 401 (1997) ("Since the Attorney General precleared the default rule, Monroe may implement it.").

b. The Attorney General has long construed Section 5 to require that a covered political subdivision must seek preclearance when it implements voting changes enacted by a partially covered State, and that longstanding construction of Section 5 is entitled to deference. See *Sheffield Bd. of Comm'rs*, 435 U.S. at 131. The Attorney General has consistently taken that position in litigation. See, *e.g.*, *United States* v. *Onslow County*, 683 F. Supp. 1021 (E.D.N.C. 1988) (local legislation enacted by North Carolina General Assembly requiring staggered terms for county commissioners in a covered political subdivision held subject to preclearance requirement); *Haith* v. *Martin*, 618 F. Supp. 410 (E.D.N.C. 1985) (North Carolina legislation changing superior court judge election system held subject to preclearance requirement in 40 counties covered by Section 5), aff'd mem., 477 U.S. 901 (1986); *United States* v. *South Dakota*, No. 79-3039 (D.S.D. May 21, 1980) (South Dakota legislation affecting organization of elected officials in State's two covered counties is subject to preclearance requirement). For the reasons explained above, the Attorney General's position is fully consistent with the text of the statute, which requires preclearance whenever a covered political subdivision "seek[s] to administer" a voting change.

The Senate Report accompanying the 1982 extension of Section 5 also noted that, between 1975 and 1980, the Attorney General objected to voting changes enacted by North Carolina, South Dakota, and New York City—entities only partially covered by Section 5—because the submitting jurisdiction had failed to show that those changes did not discriminate against minority voters in political subdivisions of those entities that were covered by Section 5. S. Rep. No. 417, 97th Cong., 2d Sess. 10-11

(1982).[2] The Senate Report expressed agreement with the Attorney General's position that voting changes applicable to a covered political subdivision within a State but enacted by a State not independently subject to Section 5 must be precleared before they may be administered. See *id.* at 12 n.32 ("While North Carolina, as a State, is not subject to Section 5, [redistricting] legislation in question affected North Carolina counties which are covered and, therefore, it should have been precleared."); cf. *Sheffield Bd. of Comm'rs*, 435 U.S. at 132-134 (noting similar congressional agreement with Attorney General's construction of Section 5 as applicable to all political subunits of a covered State). "When a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation." *Id.* at 134. Accordingly, the Attorney General's construction of Section 5 as applicable to cases like this one should be given controlling weight.

2. The district court concluded that a covered political subdivision need not seek preclearance when it administers a law enacted by a partially covered State based upon the following determinations: (a) the language of Section 5, it believed, "does not apply to an uncovered state which 'enact[s] or seek[s] to administer' a voting plan in a subordinate, covered county"; (b) "the purpose of § 5 appears to be to target only those enactments by jurisdictions suspected of abridging the right to vote and not those put in force by a non-covered, superior jurisdiction"; and therefore (c) "the question here is whether the State of California, rather than the County, 'enact[ed]' and 'seek[s] to administer' the county-wide voting plan in Monterey County." J.S. App. 4-5 (footnote omitted).

[2] There was no conference report on the 1982 extension of the Voting Rights Act; the House of Representatives adopted the version of the legislation passed by the Senate. See 128 Cong. Rec. 14,933-14,940 (1982). The Court has described the Senate Report as the "authoritative source" of the legislative history for the 1982 extension of the Act. *Thornburg* v. *Gingles*, 478 U.S. 30, 43 n.7 (1986).

The district court's analysis is fundamentally in error, for it uses the terms "enact" and "seek to administer" interchangeably. As we have explained above, Congress's use of those terms in the disjunctive indicates that it intended the terms to have different meanings, and the ordinary meaning of "to administer" also encompasses a political subdivision's implementation of a state law. Under the district court's interpretation, by contrast, the phrase "seek to administer" would be rendered superfluous in cases like this one. That result demonstrates that the district court's construction of Section 5 is flawed. See *Bailey*, 516 U.S. at 146 ("We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning.").

Moreover, the district court's construction of Section 5 could create a very serious loophole that would endanger the achievement of the Act's purposes. If the district court's construction of Section 5 were adopted, then a political subdivision covered by Section 5 could effectively evade the preclearance requirement through the simple expedient of requesting that the state legislature validate its voting changes.[3] Under the practice of "local courtesy" that prevails in many state legislatures, it is customary for state legislators to approve locally applicable

[3] Political subdivisions in seven States that are not themselves covered by Section 5—California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota—are currently covered by Section 5. See 28 C.F.R. Pt. 51, App. Department of Justice records reflect that, during the time in which political subdivisions in those States have been covered by Section 5, at least 1300 state laws applicable in the covered political subdivisions have been submitted to the Attorney General for preclearance.

legislation that is sponsored by the local jurisdiction's legislative delegation. "In many state legislatures, approval is given without question or dissent to any purely local bill that has the support of any and all legislators from the county concerned." D. Lawrence, *Local Government Officials as Fiduciaries: The Appropriate Standard*, 71 U. Det. Mercy L. Rev. 1, 27 n.91 (1993) (quoting M. Jewell & S. Patterson, *The Legislative Process in the United States* 240 (3d ed. 1977)).[4] Indeed, most States partially covered by Section 5's requirement of preclearance permit political subdivisions to propose to state authorities laws specific to that subdivision.[5]

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[4] See also B. Miller, *Who Shall Rule and Govern? Local Legislative Delegations, Racial Politics, and the Voting Rights Act*, 102 Yale L.J. 105, 121, 128-131 (1992) (discussing local courtesy). The Court has expressed its awareness of the custom of local courtesy. See *Rogers* v. *Lodge*, 458 U.S. 613, 626 (1982) (noting that the "maintenance of [a Georgia] state statute providing for at-large elections in Burke County is determined by Burke County's state representatives, for the legislature defers to their wishes on matters of purely local application"); *City of Mobile* v. *Bolden*, 446 U.S. 55, 74 n.21 (1980) (plurality opinion); *Reynolds* v. *Sims*, 377 U.S. 533, 580-581 (1964) ("In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions.").

[5] See Cal. Gov't Code § 23714 (West 1988) (when majority of voters in a county ratify charter proposal, that proposal shall be submitted to Secretary of State); Fla. Const. art. 8, § 1, cl. (i) (county ordinances are approved after they are filed with Secretary of State); Mich. Const. art. IV, § 4 (providing for territory of a county, which is being annexed to a city, to become part of the city for senatorial elections, if city ordinance is passed and certified by Secretary of State); N.Y. Const. art. 9, § 1, cl. (h)(1) (counties may propose special laws that alter the form of government in that county); N.C. Gen. Stat. § 153A-22 (1991) (providing for the redefinition of electoral districts if resolution is filed with Secretary of State).

The loophole created by the district court's construction of Section 5 is reminiscent of the potential loophole perceived by the Court in *United States* v. *Board of Commissioners of Sheffield*, 435 U.S. 110 (1978). In that case, the Court held that all political units within a State covered by Section 5 that have power over any aspect of the electoral process are also covered by Section 5. *Id.* at 118. The Court's concern in *Sheffield* was that, unless all such political units in a covered State were also covered, a State could evade Section 5 by implementing its voting changes through its political subunits. *Id.* at 125. Justice Powell agreed with the Court's construction of Section 5 in that case because, otherwise, "[a] covered State or political subdivision * * * could achieve through its instrumentalities what it could not do itself without preclearance." *Id.* at 139 (Powell, J., concurring in part and concurring in the judgment).

The problem in a case like this one is simply the mirror image of the problem in *Sheffield*. Here, the danger is that a covered political subdivision may evade Section 5 by routing its changes in voting procedures through officials of a State that is not separately covered, including the local delegation in the state legislature. In such a fashion, a political subdivision could effectively immunize itself from the requirements of Section 5, even though it has been designated as covered by the Act under the criteria set forth by Congress in Section 4(b), and even though the jurisdiction has not followed the procedures for a "bailout" suit under Section 4(a) for exemption from the preclearance requirements of Section 5.[6]

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[6] For the same reason, the district court's suggestion that Section 5 is directed only at those entities that are themselves suspected of discrimination (J.S. App. 5) is wide of the mark. The court's construction of Section 5 could readily enable covered jurisdictions to escape Section 5 scrutiny by enlisting the assistance of their noncovered

For that reason alone, the district court's construction of Section 5 should be rejected. The Court has repeatedly explained that the Voting Rights Act "was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race," *Presley* v. *Etowah County Comm'n*, 502 U.S. 491, 501 (1992) (quoting *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 565 (1969)), and it has construed Section 5 to ensure that its preclearance requirements are not evaded through devices that could have the effect of diluting its protections, see *Sheffield Bd. of Comm'rs*, 435 U.S. at 123. See also *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966) (noting that "Congress had reason to suppose that [covered jurisdictions] might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself"); S. Rep. No. 295, 94th Cong., 1st Sess. 15 (1975) (similar). Thus, "Section 5 of the Act requires review of all voting changes prior to implementation by the covered jurisdictions." *Ibid.*

The district court's construction of Section 5 could well exclude from preclearance a state-wide legislative redistricting plan in a partially covered State, even if that plan had a discriminatory purpose or effect on residents of a covered political subdivision within the State. Thus, under the district court's construction, the redistricting plans at issue in cases like *United Jewish Organizations*

States. Moreover, Section 5 protects minority voters who reside within a covered political subdivision against voting discrimination, irrespective of the proximate source of the law that causes the discrimination. Cf. *Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32, 47 (1978) ("Congress was determined * * * to provide some mechanism for coping with all potentially discriminatory enactments whose *source* and forms it could not anticipate but whose impact on the electoral process [in a covered jurisdiction] could be significant.") (emphasis added).

v. *Carey*, 430 U.S. 144 (1977), might well not have been subject to the Section 5 preclearance requirement because New York, as a State, is not covered by Section 5, even though counties affected by the restricting plan were covered by Section 5.[7] In our view, Congress did not intend to permit the protections of Section 5 to be circumvented in that manner.

3. In dismissing this case, the district court also expressed the view that preclearance is not required because Monterey County now "lacks the discretion to choose a voting plan that does not involve a county-wide district." J.S. App. 9. That rationale is unavailing for two reasons. First, as we have explained above, the plain language of Section 5 requires a covered political subdivision to obtain preclearance whenever it "seek[s] to administer" *any* voting change. There is no exception in the language of the statute for "non-discretionary" administration of a state law.

Second, even if the district court's inquiry into the exercise of discretion might have merit in another case, it is misplaced in this case, for this Court has already found that the decision to consolidate the judicial districts in Monterey County was that of the County itself. This Court concluded, in the first appeal of this case, that the "at-large, county-wide system under which the District Court ordered the County to conduct elections undoubtedly reflected the policy choices of the County; it was the same system that the County had adopted in the first place." *Lopez*, 117 S. Ct. at 348 (internal quotation marks and brackets omitted). That conclusion remains correct. On remand, the district court found that, even before the

[7] Indeed, in *United Jewish Organizations*, the Court noted that New York had unsuccessfully pursued a "bailout suit" under Section 4(a) to obtain an exemption from Section 5 for the three counties that were at issue in that case. See 430 U.S. at 148 & n.3.

California legislature moved in 1979 to require a single municipal court district in the County, "a number of county ordinances did consolidate judicial districts." J.S. App. 7. Therefore, this case presents a circumstance in which a covered subdivision adopted voting changes that the State later ratified in state law, and the "discretion" exercised was that of the County. The voting changes at issue here clearly reflected the "policy choices" of the covered political subdivision (see *Lopez*, 117 S. Ct. at 348)—whether or not they *also* reflected the policy choices of the State.[8]

This case, therefore, does not require the Court to address whether Section 5 preclearance is necessary when a State that is not covered as a State enacts a voting change into law *without* exercising or considering the policy choices of a covered political subdivision, and the covered subdivision is afforded no discretion in administering that law. In *Young* v. *Fordice*, 117 S. Ct. 1228, 1235 (1997), the Court suggested that, when a covered jurisdiction seeks to implement a federal law, Section 5 preclearance may not be necessary if the law leaves the covered jurisdiction with

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[8] The district court also noted that the 1995 amendment to the California Constitution converted all justice courts into municipal courts (J.S. App. 8), but it appears to have misapprehended the relation of that amendment to this case. The constitutional amendment did not effect any change with respect to voting in Monterey County; it simply changed the names of the then-existing justice courts to municipal courts and provided authority for future changes. The amendment was precleared by the Attorney General as "enabling," because subsequent legislation would be necessary to make any change affecting the election of judges to those courts in covered counties. Moreover, as we have noted above, the legislation and ordinances that consolidated the justice courts and municipal courts in Monterey County were all enacted well before that constitutional amendment; the Attorney General precleared the ultimate 1983 consolidation, but not the consolidations preceding it. See *Lopez*, 117 S. Ct. at 344-345.

no discretion as to how it may implement that federal law. The Court has never addressed whether or how that "lack of discretion" concept would apply to a situation in which a covered political subdivision must administer voting changes under *state* law. But in cases concerning voting changes mandated by partially covered States, this Court has assumed—correctly in our view—that such changes are subject to Section 5's preclearance mandates if they affect covered political subdivisions. For example, in *United Jewish Organizations* v. *Carey*, 430 U.S. at 156-157, the Court explained that when New York, a State that is partially covered by Section 5, enacted statutes requiring redistricting of counties, those statutes were subject to Section 5's preclearance mandates insofar as they affected counties that had been determined to be covered political subdivisions. See also *Shaw* v. *Hunt*, 116 S. Ct. 1894, 1904 (1996) (involving redistricting statute enacted by North Carolina, a partially covered State); *Gingles* v. *Edmisten*, 590 F. Supp. 345, 350-351 (E.D.N.C. 1984) (similar), aff'd in part & rev'd in part *sub nom. Thornburg* v. *Gingles*, 478 U.S. 30 (1986).

4. For the reasons discussed above, the district court's judgment is clearly in error. It has been more than 25 years since Monterey County administered the first of the unprecleared changes at issue, and more than 6-1/2 years since this action was filed. In its 1996 opinion in this case, this Court expressed its concern that "[t]he County has not discharged its obligation to submit its voting changes to either of the forums designated by Congress," and it instructed that "[t]he requirement of federal scrutiny should be satisfied without further delay." *Lopez*, 117 S. Ct. at 349. The Court also stated that the district court bore some of the responsibility for the delay in this case, *ibid.*, and yet the delay has continued; moreover, there remain other issues that the district court may be asked

to address before this case is finally adjudicated at the trial level. See *id.* at 347. The district court's errors in this case clearly warrant reversal of the judgment, and the Court may wish to consider summary reversal in order to avoid a delay of another year in the ultimate resolution of this case.

CONCLUSION

The Court should note probable jurisdiction. The Court may wish to consider summary reversal.

Respectfully submitted.

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MARCH 1998

No. 97-1396

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,
Appellants,
v.
MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees,*
and
WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOINT APPENDIX

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Appeal Docketed February 25, 1998
Probable Jurisdiction Noted April 27, 1998

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[1] For the convenience of the Court and for purposes of quick reference, the titles of any federal statutes, state statutes, and county ordinances are included in a separate section at the end of this Table of Contents.

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[2] This document is not in the record, but is included for the convenience of the Court.

* The text of the statute is not part of the record, but the full text is included in the Appendix to the Jurisdictional Statement.

** The text of the ordinance is not part of the record, but the text is included in the Appendix to the Jurisdictional Statement.

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
5/31/96	193	"MOTION before Judge Ronald M. Whyte by Plaintiff David Serena to extend judicial terms [5:91-cv-20559] (cv) [Entry date 06/03/96]"
5/31/96	194	"MEMORANDUM by Plaintiff David Serena in support of motion to extend judicial terms [193-1] [5:91-cv-20559] (cv) [Entry date 06/03/96]"
5/31/96	195	"MOTION by Plaintiff David Serena to amend complaint [5:91-cv-20559] (cv) [Entry date 06/03/96]"
5/31/96	196	"MEMORANDUM by Plaintiff David Serena in support of motion to amend complaint [195-1] [5:91-cv-20559] (cv) [Entry date 06/03/96]"
7/26/96	197	"ORDER by Judge Ronald M. Whyte that the motion to amend complaint [195-1] is submitted: Opposition filed by 8/16/96 and reply filed by 8/23/96. (Date Entered: 07/31/96) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 07/31/96]"
8/15/96	200	"OPPOSITION by Intervenor-Defendant California, State of to motion to amend complaint [195-1], motion to extend judicial terms [193-1] [5:91-cv-20559] (cv)"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
8/16/96	201	"NOTICE by Intervenor Stephen A. Sillman of non opposition to motion to amend [5:91-cv-20559] (cv) [Entry date 08/21/96]"
8/16/96	202	"NOTICE by Intervenor Stephen A. Sillman of non-opposition to motion to extend terms [5:91-cv-20559] (cv) [Entry date 08/21/96]"
8/23/96	203	"REPLY by Plaintiff David Serena re motion to amend complaint [195-1], re motion to extend judicial terms [193-1] [5:91-cv-20559] (cv)"
9/25/96	207	"ORDER by Judge Ronald M. Whyte granting motion to amend complaint [195-1] and extend Judges terms (Date Entered: 9/30/96) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 09/30/96]"
10/24/96	208	"AMENDED COMPLAINT (FIRST) [1-1] by Plaintiff David Serena, Plaintiff Jesse G. Sanchez, Plaintiff William A. Melendez, Plaintiff Crescencio Padilla, Plaintiff Vicky M. Lopez [5:91-cv-20559] (cv) [Entry date 10/25/96]"
10/30/96	209	"STIPULATION and ORDER by Judge Ronald M. Whyte: extending time to answer within 30 days to file responsive pleadings. (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 11/01/96]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
11/25/96	211	"ANSWER by defendant Monterey County to complaint [208-1] [5:91-cv-20559] (cv) [Entry date 11/26/96]"
11/25/96	212	"NOTICE OF MOTION AND MOTION by Intervenor-Defendant California, State of to dismiss 1st amended complaint [5:91-cv-20559] (cv) [Entry date 11/26/96]"
11/25/96	213	"MEMORANDUM by Intervenor-Defendant California, State of in support of motion to dismiss 1st amended complaint [212-1] [5:91-cv-20559] (cv) [Entry date 11/26/96]"
11/26/96	214	"ANSWER intervention to Amended complaint [208-1] [5:91-cv-20559] (cv)"
12/4/96	215	"INTERVENOR'S COMPLAINT by Intervenor Stephen A. Sillman [5:91-cv-20559] (cv) [Entry date 12/06/96]"
1/9/97	218	"CERTIFIED COPY of USCA[3] Order: reversing and remanding the Decision of the District Court [Appeal [189-1] [5:91-cv-20559] (cv)"

[3] Docket Entry No. 218 erroneously attributes a Supreme Court Order to the "USCA." The correct designation should be United States Supreme Court.

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
1/9/97	219	"CLERK'S letter spreading the mandate to counsel re appeal [189-1] [5:91-cv-20559] (cv)"
1/13/97	220	"NOTICE OF MOTION AND MOTION by Intervenor-Defendant California, State of to vacate order extending terms with Notice set for 2/20/97 at 11:00 [5:91-cv-20559] (cv)"
1/13/97	221	"MEMORANDUM by Intervenor-Defendant California, State of in support of motion to vacate order extending terms [220-1] [5:91-cv-20559] (cv)"
1/13/97	222	"DECLARATION by D.. G. Stone on behalf of Intervenor-Defendant California, State of re motion to vacate order extending terms [220-1] [5:91-cv-20559] (cv)"
1/22/97	224	"NOTICE OF MOTION AND MOTION by Intervenor Stephen A. Sillman, Intervenor Stephen A. Sillman for order to substitute party [5:91-cv-20559] (cv) [Entry date 01/23/97]"
1/22/97	225	"DECLARATION by Judge Wendy Duffy on behalf of Intervenor Stephen A. Sillman re motion for order to substitute party [224-1] [5:91-cv-20559] (cv) [Entry date 01/23/97]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
1/22/97	226	"PROOF OF SERVICE by Intervenor Stephen A. Sillman of motion for order to substitute party [224-1] [5:91-cv-20559] (cv) [Entry date 01/23/97]"
1/23/97	227	"STIPULATION and ORDER by Judge Ronald M. Whyte: granting motion for order to substitute party [224-1] (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 01/24/97]"
1/30/97	228	"MEMORANDUM by Plaintiff David Serena, Plaintiff Jesse G. Sanchez, Plaintiff William A. Melendez, Plaintiff Crescencio Padilla, Plaintiff Vicky M. Lopez in opposition to motion to vacate order extending terms [220-1] [5:91-cv-20559] (cv)"
1/30/97	229	"MEMORANDUM by Plaintiff David Serena, Plaintiff Jesse G. Sanchez, Plaintiff William A. Melendez, Plaintiff Crescencio Padilla, Plaintiff Vicky M. Lopez in opposition to motion to dismiss 1st amended complaint [212-1] [5:91-cv-20559] (cv)"
1/30/97	230	"OPPOSITION by Intervenor Wendy Duffy to motion to vacate order extending terms [220-1] [5:91-cv-20559] (cv)"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
1/30/97	231	"DECLARATION by W. Duffy on behalf of Intervenor Wendy Duffy re opposition [230-1] [5:91-cv-20559] (cv)"
1/30/97	232	"BRIEF FILED the US regarding motion to dismiss 1st amended complaint [212-1] [5:91-cv-20559] (cv)"
2/6/97	237	"REPLY by Intervenor-Defendant California, State of re opposition memorandum [229-1] [5:91-cv-20559] (cv)"
2/6/97	238	"REPLY by Intervenor-Defendant California, State of re opposition [230-1] [5:91-cv-20559] (cv)"
2/11/97	239	"REPLY by Intervenor-Defendant California, State of to US Amicus Brief re: motion to dismiss [5:91-cv-20559] (cv)"
2/20/97	241	"MINUTES: (C/R I. Rodriguez) that the motion to vacate order extending terms [220-1] is submitted, that the motion to dismiss 1st amended complaint [212-1] is submitted [5:91-cv-20559] (cv) [Entry date 03/13/97]"
4/2/97	248	"LETTER dated 4/2/97 from Joaquin G. Avila re: a recent decision by the US Supreme Court [5:91-cv-20559] (cv) [Entry date 04/03/97]"

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
4/3/97	249	"LETTER dated 4/2/97 from Daniel G. Stone re: Opinion of the US Supreme Court [5:91-cv-20559] (cv)"
4/11/97	252	"NOTICE of recent supreme court decision and response to State's 4/2/97 letter to court.[4] [5:91-cv-20559] (cv)"
4/22/97	253	"REPORTER'S TRANSCRIPT; Date of proceedings: 2/20/97 (C/R: I. L. Rodriguez) [5:91-cv-20559] (cv) [Entry date 04/24/97]"
5/16/97	263	"LETTER dated 5/15/97 from Daniel G. Stone re: new opinion of the US Supreme Court [5:91-cv-20559] (cv)"
7/15/97	272	"LETTER dated 7/14/97 from Daniel G. Stone re: new opinion of the USCA [5:91-cv-20559] (cv)"
8/6/97	274	"LETTER dated 8/6/97 from Joaquin G. Avila re: Supreme Court's decision on another case. [5:91-cv-20559] (cv)"
8/20/97	275	"LETTER dated 8/19/97 from Daniel G. Stone re: letter of 8/6/97 [5:91-cv-20559] (cv)"

[4] Docket Entry No. 252 erroneously omits attribution. The correct designation should reflect that the Notice was "by amicus USDOJ."

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
11/17/97	276	"ORDER by Judge Ronald M. Whyte setting hearing on motion to vacate order extending terms [220-1] 2:00 12/16/97, setting hearing on motion to dismiss 1st amended complaint [212-1] 2:00 12/16/97 (Date Entered: 11/18/97) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 11/18/97]"
11/17/97	277	"ORDER by Judge Ronald M. Whyte granting motion to dismiss 1st amended complaint [212-1] (Date Entered: 11/18/97) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 11/18/97]"
12/2/97	278	"LETTER dated 11/24/97 from Daniel G. Stone re: opinion of the US Supreme Court. [5:91-cv-20559] (cv) [Entry date 12/03/97]"
12/9/97	279	"BRIEF FILED[5] regarding order [277-1] [5:91-cv-20559] (cv) [Entry date 12/10/97]"

[5] Docket Entry No. 279 omits attribution. The correct designation should reflect that the Brief was "by amicus USDOJ".

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
12/9/97	280	"MOTION for leave to file response brief to 11/17/97 tentative order.[6] [5:91-cv-20559] (cv) [Entry date 12/10/97]"
12/12/97	281	"LETTER dated 12/10/97 from Daniel G. Stone re: State of California opposes the request of Amicus Curiae US re: a supplemental brief in opposition to the State 11/25/96 motion to dismiss. [5:91-cv-20559] (cv)"
12/15/97	282	"LETTER dated 12/12/97 from Douglas Holland re: Monterey County does not object to the filing of the US Motion to file a response brief. [5:91-cv-20559] (cv) [Entry date 12/16/97]"
12/16/97	283	"NOTICE by Plaintiff Vicky M. Lopez of section 5 preclearance status of relevant state statutes [5:91-cv-20559] (cv)"

[6] Docket Entry No. 280 omits attribution. The correct designation should reflect that the Motion was "by amicus USDOJ".

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
12/16/97	284	"DECLARATION by G. Schneider on behalf of Intervenor-Defendant California, State of acting deputy chief voting section[7] [5:91-cv-20559] (cv)"
12/16/97	285	"MINUTES: (C/R Lee-Anne Shortridge) (Hearing Date: 12/16/97) that the motion to dismiss 1st amended complaint [212-1] is submitted [5:91-cv-20559] (cv) [Entry date 12/19/97]"
12/19/97	286	"ORDER by Judge Ronald M. Whyte granting motion to dismiss 1st amended complaint [212-1], denying motion to stay pending application to the Supreme Court. The Court declines to enter a stay as that would affect the County's ability to comply with the filing periods for the direct primary to be held on 6.2.98. dismissing case; appeal filing ddl 2/20/98 (Date Entered: 12/22/97) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 12/22/97]"

[7] Docket Entry No. 284 erroneously attributes a Declaration to the State. The correct designation should reflect that it was "submitted on behalf of amicus USDOJ."

Relevant Docket Entries for *Lopez, et al. v. Monterey County, et al.*, Supreme Court Docket No. 97-1396		
Date	**Doc. No.**	**Description**
12/19/97	287	"JUDGMENT: by Judge Ronald M. Whyte dismissing case; and Judgment is entered against plaintiffs and in favor of dfts State of California and County of Monterey. appeal filing ddl 1/21/98 (Date Entered: 12/22/97) (cc: all counsel) [5:91-cv-20559] (cv) [Entry date 12/22/97]"
12/24/97	288	"NOTICE OF APPEAL by Plaintiff from Dist. Court decision order [286-2] Fee status pd, #504158 [5:91-cv-20559] (cm) [Entry date 12/29/97]"
12/30/97	289	"REPORTER'S TRANSCRIPT; Date of proceedings: 12/16/97 (C/R: Lee-Anne Shortridge) [5:91-cv-20559] (cv)"
2/4/98	294	"LETTER dated 1/23/98 from the Supreme Court re: application for stay. [5:91-cv-20559] (cv)"
3/6/98	--	"NOTIFICATION by The Supreme Court of the US Office of the Clerk Appellate Docket Number 97-1396 [5:91-cv-20559] (cv)"

No. 97-1396

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants*,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF ON THE MERITS FOR APPELLANTS

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QUESTION PRESENTED

WHETHER A SECTION 5-COVERED JURISDICTION MAY IMPLEMENT VOTING CHANGES WITHOUT PRECLEARANCE–WHEN THE CHANGES WERE INITIALLY CREATED BY COUNTY ORDINANCES THAT THIS COURT ALREADY HAS DETERMINED TO BE SUBJECT TO SECTION 5–SIMPLY BECAUSE THE STATE, AN UNCOVERED JURISDICTION, SUBSEQUENTLY ENACTS LEGISLATION THAT INCORPORATES THE COUNTY'S PRIOR CHANGES.

List of All Parties in Lower Court Proceedings

The following is a list of all the parties to the proceeding in the lower court whose order and judgment of dismissal are under review:

Appellants:

Vicky M. Lopez, Crescencio Padilla, William A. Melendez, and David Serena.

Appellees:

Monterey County, California and the State of California.

Intervenor-Appellee

Wendy Duffy

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No. 97-1396

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants*,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR APPELLANTS

OPINIONS AND ORDERS BELOW

This appeal seeks to review the Order Granting (1) Motion to Dismiss First Amended Complaint; and (2) Motion to Vacate Order Extending Judicial Terms filed on December 19, 1997. The Order is not yet reported and is reprinted in full in the Appendix to the Jurisdictional Statement (hereinafter cited as J.S. App., previously filed under separate cover). J.S. App. 1. The Judgment of Dismissal entered by the District Court on

December 22, 1997, is also not reported and is reprinted in full in the Appendix to the Jurisdictional Statement. J.S. App. 11.

Jurisdictional Statement

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1253, 1291, and 42 U.S.C. § 1973c to review the Order Granting (1) Motion to Dismiss First Amended Complaint; and (2) Motion to Vacate Order Extending Judicial Terms filed by the United States District Court for the Northern District of California on December 19, 1997, and to review the Judgment of Dismissal entered by the District Court on December 22, 1997. The notice of appeal was filed on December 24, 1997, within the thirty-day time period specified by 28 U.S.C. § 2101(b). J.S. App. 13. Probable jurisdiction was noted on April 27, 1998.

Relevant Statutes and Regulations

42 U.S.C. § 1973c. The statute is reproduced in the Appendix to the Jurisdictional Statement. (J.S. App. 16).

Statement of the Case

Monterey County, California ("County") is subject to the § 5 preclearance provisions of the Voting Rights Act. Accordingly, the County must secure an administrative ruling from the United States Attorney General or a declaratory judgment from the District Court for the District of Columbia that a covered voting change enacted after November 1, 1968, does not have the purpose or the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 42 U.S.C. § 1973c; *Lopez v. Monterey County,* 519 U.S. 9, 117 S.Ct. 340, 343 (1996).

Despite this statutory mandate, the lower court ruled that a change in the County's voting practice—dependent upon ordinances already held by this Court to be subject to § 5—is

exempt from preclearance requirements. Its holding relied upon the premise that subsequently-enacted state statutes, which incorporated the County's ordinances, did not have to be precleared and obviated the need for preclearance of the ordinances. The lower court reasoned that because the State is not a § 5-covered jurisdiction, the County's voting change is now immunized from § 5 strictures.

The ruling is inconsistent with this Court's § 5 precedents and would undo decades of § 5 administrative practice involving partially covered states. If § 5 is to maintain its intended deterrent effect, it cannot be rendered meaningless simply because a county's otherwise covered voting change is incorporated into a statute enacted by an uncovered state.

Historical Background

The County had two municipal court and seven justice court districts on November 1, 1968. The courts were trial courts with limited jurisdiction.[1] The judges within each of the judicial districts were elected within the respective judicial district. Between November 1, 1968, and 1983, the County adopted a series of ordinances which ultimately consolidated the judicial districts into a single county-wide municipal court district.[2] *Lopez*, 117 S.Ct. at 344. County-wide judicial elections were conducted in 1986, 1988, and 1990. Presently, there are ten judgeships on the municipal court. In addition to the County's judicial district consolidation ordinances, the State of California

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[1] Justice court districts were eliminated as a result of a constitutional amendment adopted by the California electorate in 1995. J.S. App. 8, Order at 5.

[2] The First Amended Complaint provides a detailed chronology of the judicial district consolidation ordinances enacted by Monterey County. J.S. App. 83.

enacted laws which "have reflected changes in the County's judicial districts resulting from the consolidation process."[3] *Lopez*, 117 S.Ct. at 343-344. For example, 1979 Cal. Stats. ch. 694, § 2, consolidated the North Monterey County Judicial District into a single municipal court district. J.S. App. 32. The North Monterey County Judicial District was listed as a municipal court district in 1977 Cal. Stats. ch. 995, § 1. J.S. App. 30. However, the two statutes did not define the North Monterey County Judicial District. Such a district was defined by Monterey County Ordinance No. 2195, adopted by the Monterey County Board of Supervisors on August 10, 1976. J.S. App. 65.

None of the judicial district consolidation ordinances was submitted by the County for § 5 approval. In 1983, the State submitted for § 5 preclearance a statute which mentioned one such ordinance, providing for "Monterey County's prospective consolidation of the last two justice court districts with the remaining municipal court district." 1983 Cal. Stats. ch. 1249. J.S. App. 35. *Lopez*, 117 S.Ct. at 344. This County ordinance was Ordinance No. 2930, which the State submitted for § 5 approval. The District Court held that Ordinance No. 2930 had received the requisite § 5 approval. J.S. App. 7, Order at 6. Although Ordinance No. 2930 may have been precleared, this Court has already observed that none of the prior judicial district consolidation ordinances has ever been submitted for § 5 approval. Thus, "[u]nder our precedent, these previous consolidation ordinances do not appear to have received federal preclearance approval." *Lopez*, 117 S.Ct. at 345.

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[3] This Court listed these statutes in its prior opinion. One of the statutes listed was 1979 Cal. Stats. ch. 694, § 2, which was the statute the District Court relied upon to dismiss the present § 5 enforcement action. *Lopez*, 117 S.Ct. at 344, footnote "*".

Prior Proceedings

Appellants, who are Latino voters of Monterey County, filed this action on September 6, 1991. The case seeks injunctive relief against the implementation of the voting changes reflected in the County's judicial district consolidation ordinances because the ordinances have not received the requisite § 5 approval. The three-judge court initially held that the County's ordinances were subject to § 5 preclearance requirements but had not received § 5 approval. Subsequently, the County sought judicial preclearance from the District Court for the District of Columbia. *Monterey County v. United States*, Civ. Act. No. 93-1639 (D.D.C. filed August 10, 1993). The action was voluntarily dismissed after the County acknowledged that it was not able to demonstrate, as required by § 5, that several of the ordinances did not have a retrogressive effect on Latino voting strength. *Id.*

Thereafter, Appellants and the County submitted to the District Court for the Northern District of California proposed election plans for the court's approval. These election plans were opposed by the State and other intervenors on the basis that the plans violated certain constitutional provisions. The District Court enjoined the 1994 judicial elections and requested all the parties "to develop a workable solution." *Lopez*, 117 S.Ct. at 346. The parties were unable to resolve their differences. Subsequently, in a December 20, 1994 Order, the District Court ordered the County to implement a previously submitted division election plan in a special judicial election to be held on June 6, 1995. Under the division plan, there continued to be a single county-wide municipal court. However, judges would be elected from four divisions or election districts. The County's election district plan received § 5 approval from the Attorney General on March 6, 1995. Seven judges, with terms expiring in January 1997, were elected in the June 6, 1995 elections. *Lopez*, 117 S.Ct. at 346.

On November 1, 1995, the District Court changed course and, deciding that the interim election plan's constitutionality was in doubt, issued an Order reverting to a county-wide election to be held on March 26, 1996. As summarized by this Court, "[t]hus, in essence, four years after the filing of the complaint in this case, the District Court ordered the County to hold elections under the very same scheme that Appellants originally challenged under § 5 as unprecleared." *Lopez*, 117 S.Ct. at 346. On February 1, 1996, this Court granted a stay of the November 1, 1995 Order and noted probable jurisdiction on April 1, 1996. *Id.*

This Court held that the District Court committed legal error by implementing an election plan which reflected the County's policy choice of conducting county-wide judicial elections, when the county-wide election plan had not received the required § 5 preclearance. This Court expressly directed the County to comply with the preclearance requirements: "The requirement of federal scrutiny should be satisfied without further delay." *Lopez*, 117 S.Ct. at 349.

On remand, the State filed a motion to dismiss Appellants' First Amended Complaint and a motion to vacate the order extending judicial terms.[4] The State's motion to dismiss was based on several grounds which were expressly reserved by this Court for consideration on remand.[5] On December 19, 1997,

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[4] Following this Court's February 1996 stay order, the District Court extended the judicial terms of those judges whose terms would have expired in January 1997. J.S. App. 2, Order at 1.

[5] The District Court summarized these grounds into four categories: 1) intervening changes in state laws have superseded the county ordinances and thus the county-wide judicial election system has been converted into an election system mandated by state law rather than by county ordinances; 2) "the complaint is barred by laches"; 3) the Voting Rights Act was unconstitutionally applied when Monterey County was designated a jurisdiction subject to the § 5 preclearance provisions; and, 4) the county ordinances did not constitute voting changes subject to § 5 approval. The District Court did not address categories 2 through 4, finding that the first ground was dispositive in the dismissal of the Appellants' First Amended Complaint. J.S. App. 1, Order at 3.

the District Court dismissed the First Amended Complaint and denied a stay of its Order. J.S. App. 1, Order at 8. The judgment of dismissal was entered on December 22, 1997. J.S. App. 11. Notice of Appeal of the District Court's Order was filed on December 24, 1997. J.S. App. 13. On January 23, 1998, this Court granted a stay of the December 22, 1997, Order dismissing this action.

District Court's Order

The dismissal of the First Amended Complaint was premised upon the District Court's finding that 1979 Cal. Stats. chap. 694, previously codified in Cal. Gov. Code § 73560, consolidated three municipal courts into a single municipal court district for Monterey County.[6] The District Court held that the establishment of this single municipal court district was not subject to § 5 review because the State of California is not a designated jurisdiction subject to the § 5 preclearance

[6] The 1979 statute amended Cal. Gov. Code 73560 as follows: "There is in the county of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District. This article applies to the municipal court established within the judicial district which shall be known as the Monterey County Municipal Court." J.S. App. 32.

requirements. According to the District Court's interpretation of § 5, the opening clause refers only to those political jurisdictions which have been specifically designated pursuant to § 4(b) of the Voting Rights Act: "[T]he plain language of the clause does not apply to an uncovered state which 'enact(s) or seek(s) to administer' a voting plan in a subordinate, covered county." J.S. App. 5, Order at 4. Since the State of California was not designated pursuant to § 4(b), the District Court reasoned, state statutes mandating the implementation of voting changes in a § 5-covered county are not subject to § 5.

I. Summary of Argument

The principal issue before this Court is whether an admitted change in voting practice in a § 5-covered county is exempt from preclearance requirements simply because the state is not subject to § 5 preclearance requirements. If, as Appellants submit, the County's administration and implementation of the state statutes are subject to § 5 preclearance requirements, this Court need not reach the subsidiary question of whether the County is additionally required to obtain preclearance of the antecedent County ordinances.

In its opinion in the initial appeal of this case, this Court did not reach the question of whether state statutes have the prophylactic effect urged by the State, but it did determine a key issue on this appeal, *i.e.*, that the County ordinances enacted prior to 1983 did not receive the federal preclearance approval required by this Court's precedent. *Lopez*, 117 S.Ct. at 345. In reversing the lower court's order authorizing an election plan that had not been precleared pursuant to § 5 of the Voting Rights Act, this Court concluded its opinion by admonishing the County to satisfy its obligation to submit its voting changes to federal scrutiny "without further delay." *Id.* at 349. On remand, the lower court erroneously assumed that the subsequently enacted state statute incorporating the changes initially created by the County ordinances cured the illegal

effect of the County's failure to fulfill its preclearance obligations.

There is no warrant in the legislative history of the Voting Rights Act or the decisions of this Court for such a weakening of § 5. To the contrary, Congress expressly suspended state-enacted literacy tests, in counties covered by the Act, including counties located in states that were not fully covered. It would be incongruous to conclude that those same covered counties may escape the reach of § 5 by the operation of California State law.

A reading of the legislative history of the Voting Rights Act of 1965 confirms that Congress intended that state legislation, enacted by a state which itself is not a § 5-covered jurisdiction, should secure § 5 preclearance of such laws resulting in voting changes in § 5-covered counties. In accordance with that Congressional intent, courts have assumed that state legislation requires preclearance before implementation in covered counties, whether or not the state is covered, and whether or not the state law under scrutiny leaves the County any discretion regarding implementation.

Should there remain any doubt whatsoever that state law is subject to § 5 in partially covered jurisdictions, the county-wide at-large election scheme nonetheless requires preclearance because it is the product of County consolidation ordinances which reflect County policy.

The lower court's ruling, permitting covered jurisdictions to evade § 5's preclearance requirements by seeking enactment of state statutes reflecting the unprecleared changes, should be reversed.

A. The District Court Erred in Holding That California State Law Exempts County Judicial Consolidations from § 5 Preclearance Requirements.

A plain reading of § 5, its legislative history, and this Court's interpretation of its purpose and operation compel a reversal of the District Court's dismissal of this action. State statutes cannot insulate Monterey County from § 5 coverage, whether the state statutes reflect County policy, as Appellants argue, or not.

Section 5 of the Voting Rights Act requires preclearance of changes in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting." 42 U.S.C. §1973c. Following a thorough review of its legislative history, this Court has found that Congress intended § 5 to have the "broadest possible scope" reaching "any state enactment which altered the election law of a covered State in even a minor way." *Allen v. State Bd. of Elections*, 393 U.S. 544, 566-567 (1969). The statutory construction required to resolve the issue presented herein must begin with "a reading that will fully implement the congressional objectives." *United States v. Bd. of Com'rs of Sheffield, Ala.*, 435 U.S. 110, 117 (1978).

1. Section 4(a)'s Suspension of Statewide Literacy Tests Evinces Congressional Intent to Subject State Law to § 5 Scrutiny in the Jurisdictions Partially Covered under § 4(a).

Sections 4(a) and 5 of the Voting Rights Act are inextricably connected, because § 4(a) contains the triggering mechanism for § 5 coverage of states and political subdivisions. 42 U.S.C. §§ 1973b, 1973c. However, § 4 is more than a simple coverage formula. It explicitly suspended statewide literacy tests in fully

and partially covered jurisdictions.[7] *Id.* The close connection between these two provisions mandates a consistent reading that Congress intended to bring state law under § 5 scrutiny in political subdivisions, even when the state itself is not covered.[8]

State literacy laws in partially covered jurisdictions were incompatible with § 4(a). Regardless of the origin of the election eligibility laws, regardless of whether covered counties exercised any discretion with regard to the administration of the laws, their operation was suspended in the covered counties by the Voting Rights Act from the moment the Attorney General published the necessary determinations with regard to the coverage formula. *Gaston County, North Carolina v. United States*, 395 U.S. 285, 287 (1969).[9]

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[7] See table of State literacy laws, entitled "Tests or devices as defined by sec. 4(c) of the proposed Voting Rights Act of 1965, S. 1564, and the States in which they are used." S. Rep. No. 162, 89th Cong., 1st Sess., pp. 42-43 (1965). The table of state literacy laws includes several partially covered jurisdictions, including California, Idaho, New York, North Carolina, and Arizona.

[8] This Court has previously taken note of the need to read sections of the Voting Rights Act consistently to give effect to Congressional intent. *Chisom v. Roemer*, 501 U.S. 380, 402-403 (1991) (noting connection between §§ 2 and 5 in determining that § 2, like § 5, should apply to judicial elections).

[9] Indeed, in defining the reach of § 5, Congress recognized that mandatory state legislation, even emanating from an uncovered state, could have a discriminatory effect on the political participation of minority voters in a particular county. Thus, Monterey County became subject to the § 5 preclearance requirements pursuant to a coverage formula that

This Court upheld § 4(a) of the Voting Rights Act as a proper exercise of Congressional power to enforce the policies embodied in the 15th Amendment which would be frustrated by conflicting state action. *South Carolina v. Katzenbach*, 383 U.S. 301, 325-327 (1966). In upholding the ability of the Voting Rights Act to render state law unenforceable in covered jurisdictions, this Court made no distinction between partially and fully covered states.

The statewide character of the suspended literacy laws did not prevent Congress from suspending them in covered counties within uncovered states, nor did it prevent this Court from upholding that exercise of Congressional authority, as to fully and partially covered jurisdictions. There can be no other conclusion but that Congress intended for the citizens of partially covered jurisdictions to be protected from the potential discriminatory effects of state law.

2. The Legislative History of the 1965 Voting Rights Act and its 1982 Amendments Require the Preclearance of State Statutes Which Affect Covered Political Subdivisions.

Congress intended that the § 5 preclearance provisions reach any change in "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," irrespective of its source. In *South Carolina v. Katzenbach*, 383

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relied upon the presence of a statewide literacy test mandated by the California Constitution, even though the State of California itself was not covered, and even though Monterey County had no choice but to enforce the state law. Cal. Const. Art. II, sec.1, (repealed 1972); 42 U.S.C. §1973 b(b); 28 CFR Part 51 (Appendix), 35 Fed. Reg. 12354 (1970); 36 Fed. Reg. 5809 (1971).

U.S. at 308, this Court approved the implementation of the § 5 preclearance provisions because previous legislative efforts to "banish the blight of racial discrimination in voting" had been unsuccessful. The then existing case by case litigation approach was ineffective because "[e]ven when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration." *Katzenbach*, 383 U.S. at 314. The congressional solution to combating "the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees" was to require the review of any change in voting procedure prior to its implementation. *Id.* at 335. These changes included the "subtle, as well as, the obvious." *Allen*, 393 U.S. at 565. *See also United States v. Bd. of Com'rs of Sheffield, Ala.*, 435 U.S. at 118 - 121. The decisions of this Court reflected the intent of Congress in enacting the 1965 Voting Rights Act to eliminate all voting changes which either were adopted pursuant to a discriminatory purpose or which had a discriminatory effect on minority voting strength in those areas subject to the § 5 preclearance provisions. Accordingly, the State of North Carolina had to seek federal approval of statutes when they resulted in a voting change in one of the § 5-covered counties even though the State of North Carolina was not itself subject to the Section 5 preclearance provisions.

A review of the legislative proceedings before the United States Senate illustrates this congressional intent. After President Lyndon B. Johnson delivered his address before a joint session of the House of Representatives and the Senate on March 15, 1965, regarding the right to vote, Congressional Record, Volume 111, 89th Cong., 1st Sess., at 5058 (hereinafter cited as C.R.), a bill, S. 1564, was forwarded to the Senate Committee on the Judiciary. C.R. 5403. Section 8 of S. 1564

required certain designated states and political subdivisions to submit "... any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964, ..." to the United States District Court for the District of Columbia for a determination that such law or ordinance "... will not have the effect of denying or abridging rights guaranteed by the fifteenth amendment." C.R. 5404.

During the course of the hearings before the Committee on the Judiciary, the United States Attorney General[10] stated that 34 counties in North Carolina, along with other southern states and political subdivisions would be subject to Section 3(a) which required the suspension of literacy tests and compliance with the Section 8 preclearance provisions. Senate Hearings at 17, 236 - 238.[11] Although only 34 counties in North Carolina were subject to the preclearance requirements of Section 8, no exemption from preclearance was made for the laws of the State of North Carolina. The following colloquy between the

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[10] The United States Attorney General, speaking on behalf of the administration, supported S. 1564. Hearings before the Committee on the Judiciary, United States Senate, 89th Cong., 1st Sess., on S. 1564 to Enforce the 15th Amendment to the Constitution of the United States (1965), at 8 (hereinafter cited as Senate Hearings).

[11] There are repeated references in the Committee hearings to the fact that 34 counties in North Carolina are subject to the coverage criteria established by Section 3(a) of S. 1564. The State of North Carolina by itself was not separately designated. *See, e.g.*, Senate Hearings, Statements of United States Attorney General at 33, 243, Statements of Senator Ervin at 27, 138, 139, 243, 276, 283, 539, 597, 608, 640, 647, 675, 702, 726, 746, 797, 803, 838, 842, 844, Statement of North Carolina Board of Elections at 501, Statement of North Carolina Attorney General at 776 - 779.

United States Attorney General and North Carolina Senator Ervin occurred regarding the scope of Section 8:

> Senator Ervin. ... In other words, a State legislature has full power under the Constitution to pass laws regulating procedures for voting and prescribing qualifications. Yet, unless the State comes up here and gets in a lawsuit with the United States in the District Court of the District of Columbia, its laws cannot become effective on that subject, can they?
>
> Attorney General Katzenbach. The laws of the State and political subdivisions covered by that; yes, that is correct.

Senate Hearings at 236. Clearly this colloquy applies to the laws enacted both by the states and political subdivisions. A further discussion specifically identifies legislation from North Carolina as subject to the Section 8 preclearance provisions:

> Attorney General Katzenbach. I think it is quite a strong power, Senator. The effort is to prevent this constant slowing down process which occurs when States enact new laws that may clearly be in violation of the 15th amendment, but you have to go through the process of getting judicial determinations of that. It takes a long time. In the interval the purposes of the act are frustrated.
>
> Now, there may be better ways of accomplishing this. I do not know if

there are. There are some here I can imagine, a good many provisions of State law, that could be changed that would not in any way abridge or deny the right; and we, perhaps, except for the fact that some members of the committee, I think, including yourself, have had difficulty with giving the Attorney General discretion on some of these things - perhaps this could be improved by applying it only to those laws which the Attorney General takes exception to within a given period of time. Perhaps that would remove some of the burdens.

Senator Ervin. I take the State of North Carolina, the qualifications for voting in North Carolina which are prescribed in the State constitution.

Attorney General Katzenbach. Yes.

Senator Ervin. And it cannot be changed without a two-thirds vote of each house of the legislature.

Attorney General Katzenbach. Yes.

Senator Ervin. And it cannot be changed even then until the majority of the people of the State of North Carolina agree to it.

Attorney General Katzenbach. Yes.

Senator Ervin. And it would seem to me that it is efficacious to say that *North Carolina cannot legislate in this field, even by constitutional amendment, and make the legislation valid without getting such an adjudication*. It seems to me that is putting North Carolina in a mighty low state in the Federal structure.

Senate Hearings at 237 - 238 (emphasis added). Any remaining doubt as to whether the Section 8 preclearance provisions apply to the laws of North Carolina are removed when the following colloquy between Senators Ervin and Stennis is reviewed:

Senator Ervin. I want to ask a question and for this purpose I want to ask that section 8 of page 8 of the bill be copied here in its entirety. It reads as follows: [text of Section 8]

Now the Legislature of North Carolina has certain laws which are designed to allow the voting in Presidential election by these people who have moved into North Carolina and become permanent residents too late to qualify under our general voting laws to vote in elections, and other bills which are designed to provide for uniform administration of our election laws throughout the State.

I shall ask you if those bills should be enacted into law, they could not become effective under Section 8 until the State of North Carolina came up here, hat in hand, and begged the

District Court of the United States to judge that they are constitutional?

Senator Stennis. Yes, sir, the Senator is correct; it is cut off.

Senate Hearings at 830 - 831.

After the Committee on the Judiciary conducted its hearings, the Committee met in executive session to consider proposed amendments. C.R. at 28359. The revised S. 1564 was reported without recommendation by the Committee on April 9, 1965. C.R. at 28360. As a result of these amendments, the preclearance requirements were moved to Section 5 and there were two modifications to the federal pre-approval procedures. The first change consisted of removing the phrase "law or ordinance" from Section 8 and substituting the phrase "voting qualification or prerequisite to voting, or standard, practice, or procedure." This substitution served to further expand the type of changes encompassed within the purview of the Section 5 approval process. The second change incorporated an alternative method for securing Section 5 approval by submitting any proposed "voting qualification or prerequisite to voting, or standard, practice, or procedure" to the United States Attorney General for review. If the Attorney General did not object to the proposed voting change within a sixty-day period, the change could then be implemented by the State or the political subdivision. C.R. at 28358, 28360, 28364.

During the course of the congressional deliberations on the floor of the Senate, Senators Dirksen and Mansfield introduced on April 30, 1965, Amendment No. 124 in the nature of a substitute for the bill reported by the Committee on the Judiciary. C.R. at 9072. There was no change to Section 5 between the substitute amendment and the bill reported by the Committee on the Judiciary. *Id.* & 9073, 28360. Amendment No. 124 became known as the leadership substitute. C.R. at

9265. Senator Mansfield was the majority leader, C.R. 9075, and Senator Dirksen was the minority leader. C.R. 9072 & 11752. The absence of any changes to the Section 5 preclearance requirement reflected the view of the political leadership that federal pre-approval of voting changes was both important and necessary. *See, e.g.*, C.R. 8297 (Statement of Senator Mansfield). Moreover, Senator Hart, the Senator in charge of the bill, C.R. 11406, 11472, 11742, 11752, 28369, underscored the necessity for federal pre-approval:

> "This provision is a further appropriate assurance that 15th amendment rights will not be denied, either by laws currently in force, or by fertile imaginations. Each passing year there has been demonstrated by the enactment of new laws a settled policy to delay and frustrate the enforcement of the 15th amendment. What we have witnessed this past decade has been a prolonged fencing match, with each thrust of national power designed to protect Negro rights parried by new methods for curtailing those rights."

C.R. at 8303. In view of the importance of Section 5 in protecting minority voting rights in the face of new voting qualifications, prerequisites to voting, standards, practices or procedures with respect to voting, the political leadership did not permit any amendments which would either eliminate Section 5 or diminish its potential effectiveness. Accordingly there is no reference or even a suggestion in the hearings conducted by the Committee on the Judiciary or the deliberations on the floor of the Senate that the state laws of partially covered states[12] would be exempt from the Section 5

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[12] The Senate was well aware that the State of North Carolina itself would not be a designated jurisdiction subject to the Section 5 preclearance requirements. However, the Senate was also aware that 34 counties in North Carolina would in fact be subject to the bill's requirements. *See* Statements of Senator

approval process. On the contrary, there were efforts by Senator Ervin from North Carolina to amend the leadership substitute precisely because North Carolina state laws would be required to be submitted for Section 5 review.

On May 3, 1965, Senator Ervin offered Amendment No. 135.[13] C.R. at 9236. Amendment No. 135 proposed to delete, among other provisions, Section 5. In support of the amendment, Senator Ervin described the effect of Section 5 under the leadership substitute, Amendment No. 124: "Fourth, the bill undertakes to nullify or suspend the constitutional power of seven States namely, Alabama, Georgia, Louisiana, Mississippi, *North Carolina*, South Carolina, and Virginia, to establish and use literacy tests as qualifications for voting, *and to change their laws relating to election procedures and voting qualifications*." C.R. at 9272 (emphasis added). *See also* C.R. at 11733 (Statement of Senator Ervin: "... [T]he bill before the Senate provides that in seven States legislative acts adopted by those States in the plain exercise of their constitutional power cannot be made effective until they are approved by an executive officer of the Federal Government, the Attorney General of the United States, or by a Federal court sitting in the District of Columbia."), 11748 (Statement of Senator Ellender: "Under the pending bill, Alabama, Louisiana, Mississippi, Georgia, South Carolina, Virginia, and part of North Carolina are denied the right to enact legislation for the

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Ervin: C.R. at 6606, 8293, 8469, 8471, 9243.

[13] Previously Senator Ervin had offered Amendment No. 83, which sought to accomplish the same purpose of removing Section 5 from S. 1564. C.R. at 8989. Amendment No. 83 was subsequently withdrawn because of the expected introduction of Amendment No. 124 by the political leadership. C.R. at 9070.

establishment of further voter qualifications, or other legislation dealing with elections.").

In opposing Senator Ervin's amendment, Senator Hart, the manager of the leadership substitute, reiterated the importance of Section 5 in preventing the implementation of newly enacted laws which would perpetuate existing voting discrimination: "Section 5 would enable the Attorney General and the courts to insure against changing the laws since November of last year, which would have the effect of perpetuating discrimination." C.R. at 9794. Clearly Senator Hart's reference to the term "laws" is significant. Based upon this colloquy, there can be no doubt that Senator Hart included North Carolina as one of the states which would have to submit those laws affecting the 34 covered counties.[14] The effort by Senator Ervin to exclude the State of North Carolina from submitting for Section 5 review those state laws affecting the 34 covered counties was unsuccessful. Amendment No. 135 was overwhelmingly defeated by the Senate (64 votes against the amendment, 25 votes in favor, and 11 senators not voting). C.R. at 9807.

The legislative intent requiring submission of the laws of the State of North Carolina for Section 5 review when those laws affected the covered counties is further evidenced by a colloquy between Senator Talmadge and Senator Ervin:

> Senator Talmadge: Is it not true that the provision the Senator was discussing [Section 5] would

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[14] Senator Hart could have simply addressed the concern of Senator Ervin by stating that the laws of North Carolina would not be subject to the Section 5 preclearance requirements. However, no such statement is found in the Senate floor debate or deliberations before the Committee on the Judiciary.

give the Federal courts legislative powers affecting sovereign States?

Senator Ervin: Yes; despite the fact that tne courts have no legislative power at all under the Constitution.

....

Senator Talmadge: In this particular instance, a sovereign State would have no remedy for the deprivation of its rights before a Federal court having legislative power fixed upon it, contrary to the Constitution; is that not correct?

Senator Ervin: The Senator is correct. That is absolutely true.

Senator Talmadge: Does the Senator know of anything more monstrous than to say that a Federal district judge in the District of Columbia shall become a part of the legislative process of the State of North Carolina?

Senator Ervin: I do not. The most accurate nutshell interpretation of the Constitution of the United States was given by Chief Justice Salmon P. Chase, in Texas against White, when he said that the Constitution in all of its provisions looks to an indestructible Union composed of indestructible States.

If Congress has the power to say that a State cannot pass a law in an area

committed to it by the Constitution, and make that law effective without the consent of a Federal court, or the Attorney General of the United States, Congress has the power to destroy the States entirely. This bill goes a long way toward attempting to destroy seven States which the Constitution undertook to make indestructible."

C.R. at 10107.

The underlying premise of this colloquy is continued when Senator Talmadge offers Amendment No. 159 on May 14, 1965. C.R. at 10569. Amendment No. 159 sought to elimi nte Section 5 from the leadership substitute. C.R. at 10571. As stated by Senator Talmadge: "Yet the amendment in the nature of a substitute [Amendment No. 124, leadership substitute] would authorize the U.S. District Court for the District of Columbia to act as a third branch of these seven States [includes North Carolina, C.R. at 10572] with power, either to approve or to forbid legislation affecting elections in those particular States." *Id.* Furthermore in an additional colloquy, a specific reference was made to the applicability of Section 5 to the laws of the State of North Carolina:

Senator Ervin: Although a State has power under the Constitution to prescribe qualifications for voters and to prescribe procedures for elections, the bill provides that seven States could not change their laws on these subjects without first obtaining permission of the Attorney General of the United States, or coming anywhere from 250 to 1,000 miles to the District Court for the District of Columbia if the

> Attorney General should refuse to give them permission to change their laws.
>
> Senator Talmadge: The Senator is eminently correct. If a States tries to change the date of an election in *Raleigh, N.C.*, or in Atlanta, Ga., it must come to the District of Columbia and say, "Mr. Attorney General, will you please let us do that?"

C.R. at 10726 (emphasis added). In further remarks, Senator Talmadge stated:

> "The language which I seek to strike from the bill would require each of the *seven States*, every municipality within the affected area, and every county government which would be affected by the mathematical formula, not to make any changes whatever in their election laws except with the permission of the Attorney General of the United States and the District Court of the District of Columbia.
>
> The language in the pending bill is so phrased that it would relate to any voting qualifications or prerequisite to voting, standard, practice or procedure. No matter what kind of legislation, might be involved, whether it be from a city council, a resolution of the county commissioners, or an act of the legislature of the *States affected*, they would have to come to Washington, D.C. and beg the Attorney General to allow them to implement their own legislation and then, with his approval, would have to go before the District Court and beg once more that their constitutional powers to legislate be operative.
>
> ....

> ... However, the bill would say to the legislative bodies of the *seven States affected* that they cannot even pass a law changing an election day for the issuance of sewage revenue bonds or water revenue bonds without the approval of the Attorney General in the District Court for the District of Columbia, or that it is not possible to change entry fees for candidates for the legislature in the State of Georgia or in the *other affected States* without the approval of the Attorney General and the District Court for the District of Columbia."

C.R. at 10729 (emphasis added). As with the previous effort to eliminate the Section 5 requirements, the Senate refused to exempt the seven affected States. C.R. at 10730 (60 votes against the amendment, 19 votes in favor, and 21 senators not voting). After considering these and other amendments, the Senate passed S. 1564 on May 26, 1965. C.R. at 11752.

The far-reaching implications of § 5 restrictions on state law in partially covered jurisdictions were just as apparent and alarming to the House of Representatives from those jurisdictions as they were to the Senators. During the House debates, while meeting as a Committee of the Whole House on the State of the Union, C.R. at 15979, an effort was also undertaken to remove Section 5 from the House's voting rights bill. (H.R. 6400). On July 9, 1965, Representative Whitener of North Carolina offered an amendment to strike out all of Section 5. C.R. at 16256. In support of the amendment, Representative Kornegay, also of North Carolina stated:

> "There are several very disturbing provisions of H.R. 6400. One of these is section 5, which would require the legislation of the State to first get permission of the U.S. Attorney General or the Federal District Court in the District of Columbia, before it could change the election laws, in any manner, if one of its counties falls under the 50-percent provision of the proposed act.

> This section would in effect give to the Attorney General of the United States the power to veto or nullify an act passed by the legislature of the State of North Carolina."

C.R. at 16259. Thus there was a clear understanding in the House that Section 5 would require the preclearance of state statutes even if the state was not a designated jurisdiction when those laws effected voting changes in the state's § 5-covered counties.

The House of Representatives adopted H.R. 6400 on July 9, 1965. C.R. at 16285. The House substituted the language of H.R. 6400 into S. 1564 which was previously adopted by the Senate. C.R. at 16286. As a result of the differences between the Senate and House versions, a conference committee was established and a report was produced. C.R. 19187. The conference report was adopted by the House on August 3, 1965, C.R. at 19201, and by the Senate on August 4, 1965, C.R. at 19378, and the bill was signed by President Lyndon B. Johnson on August 6, 1965. C.R. at 19650.

A review of both the Senate and House bills does not reveal any major differences regarding the Section 5 preclearance requirement. C.R. at 11753 (Senate), 16483 (House). The conference report noted the following action on Section 5:

> "Section 5 of the House bill is similar to the Senate bill, except that the Senate version provides that a declaratory judgment approving the use of a new voting requirement will not bar a subsequent lawsuit to enjoin the use of such a requirement. The conference report adopts the House version with a clarifying amendment and with the Senate provision described above."

C.R. at 19190.

The legislative history of the 1982 amendments to the Voting Rights Act provides further support for requiring the submission of California's statutes which affect § 5-covered counties. During the legislative hearings before the Senate Subcommittee on the Constitution considering the 1982 amendments, the following colloquy occurred between Senator Orrin Hatch and Steve Suitts, then Executive Director of the Southern Regional Council:

> Senator Hatch. Thank you so much, Mr. Suitts. You complain about several enactments passed by the North Carolina Legislature which were not submitted under section 5. Is there any decision of the Supreme Court which holds that the legislature of a State which is only partially covered must submit its enactments to the Justice Department?
>
> Mr. Suitts. I do not know that there is a case precisely on that point, although I do not know that there has been any serious argument that that is not a requirement. It is pretty obvious that all those items [state statutes] which we identified do affect the 40 counties. There is a holding in the Federal court in North Carolina that a statewide law which affects one of the 40 counties must be submitted.

Hearings Before the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate on S. 53, S. 1761, S. 1975, S. 1992, and H.R. 3112 (Voting Rights Act), 97th Cong., 2d Sess., Vol. 1 (1983) at p. 599. In response to this

colloquy, the Senate Report[15] accompanying the passage of the 1982 amendments specifically stated: "While North Carolina, as a State, is not subject to section 5, the legislation in question affected North Carolina counties which are covered and, therefore, it should have been precleared." S. Rep. No. 97-417, 97th Cong., 2d Sess. (1982) at 12, n. 32 [hereinafter cited as Senate Report]. This clear directive was ratified by Congress when the 1982 amendments to the Voting Rights Act were enacted. *See United States v. Bd. of Comm'rs of Sheffield*, 435 U.S. at 134-135 (Court concluded that Congress ratified § 5 statutory interpretation as indicated by administrative practices of the Attorney General and legislative history showing that Congress agreed with that interpretation).

In summary, this review of legislative history provides compelling evidence for rejecting the attempt by the Appellee to exempt the State of California from the Section 5 preclearance requirements when state laws effect voting changes in Monterey County. This legislative history reveals that there was no question that the laws of the State of North Carolina, a partially covered Section 5 jurisdiction, would be subject to Section 5 approval. For example, this legislative intent is supported by the rejection of amendments offered by Senators Ervin and Talmadge to eliminate Section 5 from the leadership's substitute amendment (Amendment No. 124). In both instances, this legislative history demonstrates that Senator Ervin pursued the adoption of these two amendments in order to avoid having the State of North Carolina submit its laws for federal approval, the precise outcome advocated by the

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[15] Legislative committee reports are the best source for determining legislative intent. *Thornburg v. Gingles*, 478 U.S. 30, 43, n. 7 (1986)("We have repeatedly recognized that the authoritative source for legislative intent lies in the Committee Reports on the bill.")(relying upon Senate Report 97-417 for determining legislative intent of § 2 of the Voting Rights Act).

Appellee in this appeal. However, both amendments were overwhelmingly rejected by the Senate. This action by the Senate and Senator Hart's statements as manager of the leadership's substitute clearly provides the necessary documentary support for ascertaining the legislative intent of Congress in 1965.[16] Moreover, the Senate Report accompanying the 1982 amendments reaffirms this legislative intent.

As a result of this review, there can be no serious debate that Congress intended the State of North Carolina to submit its laws for Section 5 approval when those laws resulted in voting changes in its Section 5-covered counties. For this reason, the State of California must also submit its state statutes when they effect voting changes in Monterey County.

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[16] The reliance upon statements from both the proponents and opponents during the Senate deliberations over the passage of the Voting Rights Act has been previously utilized by this Court to ascertain the scope of the Section 5 preclearance requirement. *Allen*, 393 U.S. at 568 - 569. Accordingly, the statements made by Senators Talmadge, Ervin, and Hart, the manager of the leadership's substitute, and by Representative Kornegay, reflecting the intent of Congress to require the State of North Carolina to submit its laws for Section 5 approval provide compelling evidence for rejecting the Appellee's argument that the State of California is exempt from the Section 5 preclearance requirements.

3. This Court's Analysis of § 5 Issues in Partially Covered Jurisdictions Has Always Proceeded on the Correct Assumption That Congress Intended to Require Preclearance of State Statutes Effecting Voting Changes in § 5-Covered Political Subdivisions.

Consistent with congressional intent, this Court and lower courts have assumed, without exception, that statewide legislation affecting covered counties is subject to preclearance requirements.[17] An affirmance of the lower court's contrary opinion would conflict with this Court's treatment of other statewide schemes that were banned outright or subjected to federal scrutiny in partially covered jurisdictions.

North Carolina, for example, was only partially covered under § 4(a). When, in 1966, North Carolina's State literacy test was suspended in Gaston County by virtue of the County's inclusion as a covered jurisdiction under §4 (a), Gaston County unsuccessfully sought a declaratory judgment to reinstate the statewide literacy test. *Gaston County,* 395 U.S. at 287-288. In the course of deciding what evidence a lower court could properly consider under § 5, this Court assumed that North Carolina's partial coverage was no impediment to the suspension of its statewide literacy test in its covered political subdivisions. *See also Apache County, v. United States,* 256 F.Supp. 903 (1966) (three covered counties and the State of

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[17] Although the jurisdictional issue was not addressed directly in the cases set forth in this section, "a review of the sources of the Court's jurisdiction is a threshold inquiry appropriate to the disposition of every case that comes before us." *Brown Shoe Co. v. United States,* 370 U.S. 294, 305-306 (1962).

Arizona filed for declaratory judgment to reinstate the Arizona literacy test in the three counties).

A few years later, in *United Jewish Organizations v. Carey,* 430 U.S. 144 (1977), this Court was presented with a constitutional claim involving a state reapportionment statute that effected voting changes in the three counties in the State of New York which were covered by § 5. The State of New York, not covered by § 5, had previously filed for a declaratory judgment exempting three counties under § 4 ("bail out") procedures. The District Court for the District of Columbia, after a number of years of litigation, ordered the State to comply with the submission requirements of § 5 with regard to its statewide redistricting plans, and this Court affirmed. *New York ex rel. New York County v. United States,* 419 U.S. 888 (1974). *See United Jewish Organizations v. Carey,* 430 U.S. at 150, n. 3, *citing United Jewish Organizations v. Wilson,* 510 F.2d 512, 516 (2nd Cir. 1975). The federal appellate court later reviewing the constitutionality of those statewide plans noted that the State had not appealed the Attorney General's objection to the implementation of the plans in the covered jurisdiction. "Thus we can say unequivocally that the State of New York was in a position where it had to obtain Department of Justice approval of new district lines before it could hold a proper election under the Voting Rights Act." *Id.* at 517.

On appeal, this Court defended New York's attention to the preservation of minority voting strength in its covered counties, finding that "Congress was well aware of the application of § 5 to redistricting." *United Jewish Organizations v. Carey,* 430 U.S. at 158. This Court noted that in its 1970 extension of the Voting Rights Act Congress was cognizant of the danger of vote dilution through redistricting, and that the Senate and House Reports referred specifically to the Attorney General's role in "screening redistricting plans." *Id.* at 158, and n. 18, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess.,

on S. 407, S. 903, S. 1297, S. 1409, and S. 1443, 124 (testimony of Nicholas Katzenbach)(1975)(hereinafter cited as 1975 Senate Hearings); S.Rep. No. 94-295, 94th Cong., 1st Sess., pp. 15-19 (1975); H.R. Rep. No. 94-196, 94th Cong., 1st Sess., pp. 8-11 (1975). Relying on this history, *and though § 5 did not cover the entire State of New York*, this Court found it "clear that new or revised reapportionment plans ... may not be adopted by a covered state" without preclearance. *United Jewish Organizations v. Carey*, 430 U.S. at 157. That holding would be implicitly reversed as to partially covered jurisdictions were this Court to agree with the lower court's holding that the California state statutes have converted the Monterey County ordinances into a statewide plan that does not require preclearance.

Nearly two decades later, again assuming § 5 applicability to state redistricting laws in partially covered jurisdictions, this Court in *Shaw v. Hunt*, 517 U.S. 899, 910-913 (1996), did not question the propriety of the Attorney General's § 5 review of North Carolina's redistricting plan as it affected the covered counties in that state.

Thus, this Court has consistently exercised its jurisdiction over issues involving preclearance of state law in partially covered jurisdictions. Prior to this decision, no court has ever held state law to be outside § 5's preclearance requirements by virtue of its legislative source alone. The lower court's ruling undermines this Court's vigilance to the potential discriminatory effect of statewide legislation on political subdivisions.

4. The District Court's Holding Conflicts with the Attorney General's Longstanding Construction of § 5 and the Attorney General's Consistent Practice of Requiring § 5 Submissions of State Enactments Affecting Covered Jurisdictions.

The District Court failed to accord proper deference to the Attorney General's interpretation of § 5 and the Attorney General's § 5 practices which repeatedly have required the submission of state statutes which effect voting changes in covered counties even if the state is not subject to § 5.

Pursuant to applicable regulations, the United States Attorney General evaluates statutes from states not subject to the § 5 preclearance provisions, when those statutes effect voting changes in § 5-covered political jurisdictions. *See* 28 C.F.R. § 51.23 ("When one or more counties or other political subunits within a State will be affected, the State may make a submission on their behalf.").[18] During the time in which political subdivisions in California, Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota have been partially covered by Section 5, the Department of Justice has received at least 1300 submissions of state laws applicable in covered political subdivisions. *See* Brief for the United States as Amicus Curiae Supporting Appellants, p. 13, n.3.

For example, the Attorney General has evaluated North Carolina's legislative redistricting plan as it affected § 5-covered counties. *See* S. Rep. No. 97-417, 97th Cong., 2d Sess., p. 11

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[18] *See also*, 28 C.F.R. § 51.12 ("Any change affecting voting [is subject to preclearance requirement even if it] is designed to remove the elements that caused objection by the Attorney General to a prior submitted change ....").

(1982)(Letter of Objection of Asst. Attorney General, December 7, 1981).[19] Moreover, as previously stated, in the recent congressional redistricting in North Carolina, the plan was submitted to and evaluated by the Attorney General prior to the constitutional challenge filed by Anglo voters. *Shaw v. Hunt*, 517 U.S. at 902. *See also Johnson v. DeGrandy*, 512 U.S. 997, 1001 n. 2 (1994) (Florida congressional redistricting plan submitted for § 5 preclearance because five counties are subject to § 5).

The Attorney General's interpretation of § 5 coverage, its prior practice in accordance with that interpretation, and the apparent habitual acquiescence by affected states are the exact circumstances this Court found supportive in *Perkins v. Matthews*, 400 U.S. 379, 391-395 & n. 10, n. 11 (1971). Testimony that the Attorney General regarded changes in polling place locations and municipal boundaries as falling within the purview of the Act, and that "at least some" affected jurisdictions had submitted such changes for preclearance was given "great deference" by this Court in reaching the same

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[19] Although the State of North Carolina is not subject to § 5 preclearance, *see* 28 C.F.R. Part 51 (Appendix), the Attorney General has evaluated other North Carolina state statutes affecting § 5-covered counties within the state. 1975 Senate Hearings, Testimony of Hon. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, at 535, Exhibit 5 at 600, Letters of Objection, dated July 30, 1971 & September 27, 1971. There was also a letter of objection against the congressional, assembly, and senate redistrictings for the State of New York, although the state itself is not a § 5-covered jurisdiction. Letter of Objection, dated April 1, 1974. *Id.* at pp. 599 & 667.

conclusion. *Id., citing Udall v. Talman*, 380 U.S. 1, 16 (1965).[20] Similarly, testimony that the Department of Justice had reviewed "approximately 58 changes in election dates and approximately 10 changes in dates for candidate filing periods" pursuant to its regulations resolved "[a]ny doubt that these changes are covered by § 5." *N.A.A.C.P. v. Hampton County Election Com'n*, 470 U.S. 166, 178-179 (1985).

The Attorney General's interpretation of § 5, requiring the review of state statutes affecting § 5-covered counties, is consistent with the express language of § 5 as well as its legislative history.[21] Thus, this Court should defer to this

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[20] Judicial deference to administrative interpretations is due to the central role of the Attorney General in the § 5 preclearance process. *United States v. Bd. of Comm'rs of Sheffield*, 435 U.S. at 131 ("In recognition of the Attorney General's key role in the formulation of the Act, this Court in the past has given great deference to his interpretations of it."); *Blanding v. Dubose*, 454 U.S. 393, 401 (1982) ("We have frequently stated that courts should grant deference to the interpretation given statutes and regulations by the officials charged with their administration.") (agreeing with Attorney General's interpretation that receipt of certain documents constitutes a request for reconsideration of a previously issued § 5 objection letter, rather than a new submission of a voting change).

[21] This deference to the United States Attorney General's administrative interpretation of the § 5 preclearance provisions is not without limits. *See Presley v. Etowah County Com'n*, 502 U.S. 491, 508-09 (1992) (Court did not defer to an administrative interpretation provided by the Attorney General, because Congress specifically stated its intent that § 5 reached only those changes affecting voting); *Miller v. Johnson*, 515 U.S. 900, 922-923 (1995)(Although the Court has deferred to

longstanding administrative construction of § 5 and the Attorney General's consistent practice of requiring § 5 submissions of state enactments affecting covered jurisdictions in partially covered states.

5. Section 5 Changes Include Those Administered by a Covered Jurisdiction, Regardless of the Source of the Enactment That Effected the Change.

A § 5-covered jurisdiction, such as Monterey County, which "enacts or seek[s] to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968" must first secure approval from either the United States Attorney General or the United States District Court for the District of Columbia before such a voting change can be implemented. 42 U.S.C. § 1973c.

The District Court's focus on the legislative source of the voting change renders meaningless any distinction between "enacts" and "seeks to administer." Yet this is contrary to the ordinary meaning of these terms, *see Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning."), and is contrary to this Court's "reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment." *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 562 (1990) (*citing Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 837 (1988)). "Enact" is defined as "to make into law," whereas "administer"

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the Justice Department's interpretation of the Voting Rights Act in statutory cases, it is inappropriate to do so when the Court is engaged in constitutional scrutiny.).

means "to manage or direct." Webster's New World Dictionary (3rd College ed. 1988). Thus, voting changes, as set forth in § 5, are not limited to those changes which are initiated by the covered jurisdiction but also include those that are managed or directed by it.[22]

This distinction between "enact" and "administer" is also supported by California law which provides that, when elections are to be conducted at the local level, the local jurisdiction shall "administer" the election. In California Government Code §74784, for example, the state "enacted" a statute that directs a county official to "administer that election." Identical language is employed in numerous other state statutes. *See, e.g.*, Cal. Gov. Code §§ 26625, 26666, 26668, 72110, 72114, 73665.6(a), and 74820.1(b).

The court below further reasoned that "'seeks to administer'... must involve some exercise of policy choice and discretion by the covered jurisdiction" and that here "[t]he County, as a subordinate jurisdiction of the State, lacks the discretion to choose a voting plan that does not involve a county-wide district." J.S. App. 9, Order at 7. Neither the

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[22] The District Court's construction of § 5 is also flawed by failing to accord plain meaning to the term "*any* voting qualification." "Any" must be understood in the plural sense as all encompassing. 3A C.J.S. Any at 903 ("In this, its ordinary sense, it is a word which is broad and general, and comprehensive, and is broadly inclusive, and all embracing.")(footnotes omitted). Thus, "any" voting changes are not limited to those changes which are initiated by a covered jurisdiction but instead, must include all voting changes irrespective of their legislative origin. This interpretation mirrors the § 5 regulations. *See* 28 C.F.R. § 51.2 (definition of "Change affecting voting" refers to any voting change) and 28 C.F.R. § 51.12 (Section 5 applies to any voting changes).

plain language of § 5 nor this Court's construction of it even hint at the notion that "seeks to administer" only applies to a local jurisdiction when it is exercising discretion in its administration or implementation of an unprecleared state statute.

The lower court relied on *Young v. Fordice*, 520 U.S. 273, 117 S.Ct. 1228 (1997), to conclude that the exercise of discretionary policy choices was dispositive of the § 5 statutory construction issue. But *Young*'s analysis, arising in the context of whether a state could maintain a dual registration system, cannot be read so broadly. *Young* involved federal legislation —the National Voter Registration Act—that directly regulated states' voting practices, an area in which Congress' constitutional power to mandate such voting changes by the state is unquestioned. *See Smiley v. Holm*, 285 U.S. 355, 366 (1932); *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995), *cert. denied*, 516 U.S. 1093 (1996). *See also State of South Carolina v. Katzenbach*, 383 U.S. at 327. In enacting § 5, Congress was concerned about the potential discriminatory effects of voting changes by "a State or political subdivision," not changes mandated by Congress itself. The distinct factual context in *Young*, therefore, is inapplicable to the facts presented here. The lower court's reliance on *Young* to create a gaping hole in § 5 coverage—exempting voting changes by covered counties so long as those changes are subsequently incorporated into state legislation—is wholly inconsistent with this Court's teachings as subsequently reaffirmed last term in *Foreman v. Dallas County*, 117 S. Ct. 2357 (1997).[23]

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[23] Most of § 5's partially covered states operate, by law or by custom, to extend state legislative courtesy to local jurisdictions wishing to propose state enactments specific to that local subdivision. *See*, Brief for United States as Amicus Curiae, pp. 12-17 and citations therein. Thus, the District Court's view would allow Monterey County, and other political subdivisions, to escape § 5 scrutiny simply by requesting state codification of purely local legislation.

In *Foreman*, Dallas County argued that its change in voting practice was not subject to § 5 because the adoption of the voting change was discretionary and it was acting pursuant to a state statute which already had been precleared. In rejecting this argument, this Court held that, in determining whether § 5 applies, "[t]he question is simply whether the County, by its actions, *whether taken pursuant to a statute or not*, 'enacted or [sought] to administer any . . . standard, practice, or procedure with respect to voting different from' the one in place on November 1, 1972." *Id.* at 2358 (citing 42 U.S.C. § 1973c) (emphasis added).

Although *Foreman* involved an entire state which was the covered jurisdiction, this Court's analysis is controlling as to the crucial question here—whether a local jurisdiction "seeks to administer" a voting practice when its actions are taken pursuant to a state statute. *Foreman* answers this question in the affirmative and thereby fatally undermines the State's attempt to circumvent § 5. A county is "seeking to administer" a voting practice even when simply implementing a state statute. Thus, Monterey County's adoption of a county-wide election system is subject to preclearance whether now conducted pursuant to county ordinance or state law.[24]

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[24] The lower court's construction of § 5 is also inconsistent with *Perkins*. Under the lower court's decision, *Perkins* would have been decided differently. In *Perkins*, the city's change to at-large elections was mandated by state law and therefore, the county argued, "it had no choice but to comply with the [state] statute." *Perkins*, 400 U.S. at 394. This Court rejected that argument: "We have concluded, nevertheless, that the change to at-large elections required federal scrutiny under § 5." *Id.*

B. Assuming *Arguendo* That Section 5 Coverage is Triggered Only by Discretionary Acts on the Part of the Covered Jurisdiction, it is Triggered Here Where Monterey County Ordinances Established the County-Wide District.

If State election law is insufficient without more to trigger § 5 scrutiny, and the District Court is correct in construing "seeks to administer" as requiring some exercise of discretion beyond the implementation of an election scheme, Monterey County clearly made such a policy choice.[25] The relevant and

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Whether or not the § 5-covered jurisdiction had the discretion to adopt the voting change was not dispositive. Rather, the focus was on whether there was a change in voting procedures.

[25] Indeed, during oral argument before this Court, the State conceded that Monterey County was free to adopt the consolidation ordinances and that these consolidations were not mandated by State law.

"Question: ... Was the—Monterey County free to adopt the plans that it did—at the time that it took the actions that it did?

Mr. Stone: Yes. It's various consolidation ordinances—

Question: It wasn't mandated by State law?

Mr. Stone: No. State law permitted the counties to adopt—

Question: But it didn't require it?

Mr. Stone: No, although there is some confusion on the record in that respect."

Official Transcript of Proceedings Before the Supreme Court of the United States, *Lopez v. Monterey County*, October 8, 1996 at 35:18-36:5.

undisputed fact is that, without being subjected to § 5 preclearance, Monterey County ordinances *established* the county-wide district.

The judicial district consolidation process was originated and driven by Monterey County, not the State. J.S. 22. "Between 1972 and 1983, the County adopted six ordinances, which ultimately merged the seven justice court districts and the two municipal court districts into a single, county-wide municipal court." *Lopez* 117 S.Ct. at 344. While it is true that various pieces of state legislation also were directed at Monterey County's judicial system, this Court found that several of these laws actually "reflected changes in the County's judicial districts *resulting from the consolidation process*." *Id.* (emphasis added).

Moreover, none of the state statutes by themselves ever mandated the creation of a county-wide municipal court district. The 1979 statute, Cal. Stats. ch. 694, only created a single Municipal Court District. J.S. App. 32. However, prior to the enactment of the state statute, the Monterey County Board of Supervisors adopted on June 5, 1979, Monterey County Ordinance No. 2524, which consolidated the then three municipal court districts into one district named the Monterey County Municipal Court District. J.S. App. 94, First Amended Complaint at ¶ 40. J.S. App. 33.[26] Even at that point, the

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[26] The subsequent state statutes also did not establish a county-wide municipal court district. All of the statutes related to the number of judges assigned to the municipal court: Cal. Stats. 1983 ch. 1249, J.S. App. 35; Cal. Stats. 1985 ch. 659, J.S. App. 37; Cal. Stats. 1987 ch. 1211, J.S. App. 38 - 39; Cal. Stats. 1989 ch. 608, J.S. App. 40; Cal. Stats. 1993 ch. 1091, J.S. App. 42. The 1989 statute, although recognizing that there was a county-wide district in Monterey County, cannot be interpreted as establishing such a district. J.S. App. 8 (District Court held that 1989 statute did not establish a county-wide district).

municipal court district did not encompass the entire county. Monterey County Ordinance 2930 consolidated the remaining districts into a single county-wide municipal court district.[27] J.S. App. 79.

In fact, the state statutes alone are meaningless. The statutes did not define the boundaries of the judicial districts. Rather, the boundaries were defined by the various county ordinances. This fact is significant for two reasons. First, the absence of any boundary descriptions of the judicial district consolidations indicates that the statutes were not the exclusive legislative mechanism for the consolidations of judicial districts resulting in a county-wide district. The statutes need to be read in conjunction with the county ordinances. Second, the boundary changes occasioned by the county ordinances have yet to receive the necessary Section 5 preclearance. *Lopez*, 117 S.Ct. at 345. To the extent that the state statutes reflected these boundary changes, the statutes must also receive Section 5 approval.[28] This review of the relevant statutes and ordinances is fatal to Appellee's contention that the sole authority for conducting county-wide elections is the State's statutory scheme.

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[27] This Court has already held that the preclearance of Monterey County Ordinance 2930 did not serve to preclear the previous consolidation ordinances. *Lopez*, 117 S.Ct. at 344, 345. For this reason, this Court directed Monterey County to seek approval of these antecedent county ordinances.

[28] Changes in the size and composition of voting constituencies are changes subject to Section 5 preclearance. *Perkins v. Matthews*, 400 U.S. at 394 (change from district election to at-large election subject to Section 5 approval). *See also* 28 C.F.R. § 51.13 (e) (changes subject to Section 5 preclearance include "... changing to at-large elections from district elections, or changing to district elections from at-large elections ....").

Thus, the lower court cannot shield this voting change from § 5 scrutiny based upon the requirement "that it must involve some exercise of policy choice and discretion." This unprecleared scheme, whether currently the product of a state statute or County ordinances, *does* reflect the policy choices of Monterey County. *Lopez*, 117 S.Ct. at 348 ("at-large county-wide system undoubtedly 'reflect[ed] the policy choices' of the County").

C. Even If § 5 Does Not Apply to the State Statute's Implementation in Monterey County, the District Court Erred in Concluding that Antecedent County Ordinances Are Exempt From § 5 Preclearance Requirements.

According to the lower court, the county-wide district "was created by the 1979 amendment to [California Government Code] section 73560 and County Ordinance 2930." J.S. App. 8, Order at 6. And, the lower court concluded, "the 1979 amendment did not need preclearance, and Ordinance 2930 was precleared." *Id.* at 6, n. 4. But this Court already has found that, while the preclearance of the 1983 state statute "may well have served to preclear the 1983 County ordinance [2930]," the other antecedent consolidation ordinances are subject to § 5 requirements but "do not appear to have received federal preclearance approval." *Lopez*, 117 S.Ct. at 345. Thus, even if the lower court is correct that the 1979 state statute "did not need preclearance," the county-wide system itself cannot be implemented because the antecedent County ordinances have never been precleared.

These antecedent County ordinances consolidated judicial districts and modified the boundaries of these districts to create

the Southern and Central Judicial Districts.[29] The two judicial districts were subsequently incorporated in Monterey County Ordinance No. 2930 and consolidated with the existing municipal court district to create county-wide judicial elections. These antecedent County ordinances must secure § 5 approval. *Id.* at 345.

Yet the lower court here relied upon "superseding" changes in state law that purportedly "converted the County's judicial election scheme into a state plan thus eliminating the need for preclearance." J.S. App. 6, Order at 4. In a substantially similar context, this Court held that there is a "presumption that the Attorney General will review only the current changes

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[29] For example, the boundaries of the Central Judicial District were established as a result of a series of county ordinances dating from 1972. On November 1, 1968, the date of § 5 coverage, there were two justice court districts in the central part of the County - the Gonzales Judicial District and the Soledad Judicial District. J.S. App. 89, First Amended Complaint at ¶ 13. The County adopted several ordinances which modified the boundaries of these two justice court districts (Monterey County Ordinance No. 1852, adopted on February 1, 1972), *id.* at ¶¶ 18, 19, consolidated the two districts into the Soledad-Gonzales Judicial District (Monterey County Ordinance No. 1917, adopted on October 3, 1972), *id.* at ¶¶ 20, 21, adjusted the boundaries of the consolidated district (Monterey County Ordinance No. 2139, adopted on January 13, 1976), *id.* at ¶¶ 26, 27, renamed the district to the Central Judicial District (Monterey County Ordinance No. 2212, adopted on September 7, 1976), *id.* at ¶ 35, and adjusted the boundaries of the Central Judicial District, *id.* All of these county ordinances preceded Monterey County Ordinance No. 2930. This Court noted that none of these antecedent county ordinances have received the required § 5 preclearance. *Lopez*, 117 S.Ct. at 345, 348, 349.

in election practices effected by the submitted legislation, not prior unprecleared changes reenacted in the amended legislation." *Clark v. Roemer*, 500 U.S. 646, 657 (1991). A covered jurisdiction's submission of a "change from one number of judges to another in a particular judicial district does not, by itself, constitute a submission to the Attorney General of the prior voting changes incorporated in the newly amended statute." *Id.* at 658. If, as this Court held, subsequently enacted legislation that is submitted for preclearance cannot serve to preclear antecedent incorporated changes, then surely state legislation that is *not* submitted, even assuming *arguendo* that it is exempt from § 5, cannot serve to preclear the antecedent County ordinances here. For example, the 1979 statute refers to the North Monterey County Judicial District, J.S. App. 32, which is also mentioned in the 1977 statute. J.S. App. 30. However, neither of the two statutes defined the judicial district. The County through a series of ordinances defined the boundaries of the Castroville and Pajaro Justice Districts, consolidated those districts into one district, and renamed the district the North Monterey County Judicial District. *See, e.g.*, Monterey County Ordinance No. 2195, adopted on August 10, 1976 (changing boundaries of the consolidated district and renaming district). J.S. App. 65. Without incorporating these earlier changes by the County, the later-enacted state statutes would be meaningless.

The lower court's reliance upon "superseding" changes in state law also runs afoul of the principle that the "duty to obtain federal approval of new voting standards, practices, or procedures is a continuing one. It arises anew each time the defendant enacts or seeks to administer an uncleared voting regulation." *Dotson v. City of Indianola*, 514 F. Supp. 397, 401 (N.D. Miss. 1981), *aff'd*, 456 U.S. 1002 (1982). This construction is consistent with the plain language of § 5 which provides that "[w]henever" a covered jurisdiction "enact[s] or seek[s] to administer" a change in voting practice, preclearance must be obtained. 42 U.S.C. § 1973c.

There is no temporal limitation on the preclearance requirement nor any exception when subsequent legislation amends or "supersedes" the original voting practice change. "[A]ny" change in voting practice in the covered jurisdiction is subject to § 5 and remains so until precleared.

Nonetheless, the State seeks to immunize voting changes in the County from preclearance requirements by actions taken subsequent to the § 5 violation. But the county-wide system was indisputably created by County ordinances, almost all of which have never been precleared. That violation is a "continuing one" and cannot be cured by "superseding" legislation. *Dotson,* 514 F.Supp. at 401. To hold otherwise would sanction a County's enactment of unlawful changes so long as it was later able to obtain superseding state legislation. Section 5 should not be subject to such abuse, and a covered jurisdiction's citizens should not be so easily deprived of a remedy when confronted by unlawfully adopted electoral schemes.

Conclusion

As this Court recently noted in *Morse v. Republican Party of Virginia*, 517 U.S. 186, 209-210 (1996), "[t]he purpose of preclearance is to prevent all attempts to implement discriminatory voting practices that change the status quo." Here, it is undisputed that Monterey County repeatedly changed the status quo without subjecting such changes to § 5 review. *Lopez*, 117 S.Ct. at 345. Appellants respectfully request that the District Court's dismissal be reversed and remanded with an order directing the submission of the unprecleared County ordinances and State statutes for preclearance without further delay.

Dated: June 11, 1998

Respectfully submitted,
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(10)

No. 97-1396

In The

Supreme Court of the United States

October Term, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,

Appellants,

vs.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA,

Appellees,

and

WENDY DUFFY,

Intervenor-Appellee.

On Appeal From The United States District Court For The Northern District Of California

BRIEF ON THE MERITS OF APPELLEE MONTEREY COUNTY

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QUESTION PRESENTED

WHETHER A STATE LAW ADOPTED BY AN UNCOVERED JURISDICTION UNDER SECTION 5 IS REQUIRED TO BE PRECLEARED PRIOR TO IMPLEMENTATION WITHIN OR BY A COVERED JURISDICTION INSOFAR AS SUCH STATE LAW AFFECTS VOTING IN SUCH COVERED JURISDICTION.

LIST OF ALL PARTIES IN LOWER COURT PROCEEDINGS

The following is a list of all the parties to the proceeding in the lower court whose order and judgment of dismissal are under review:

Appellants:

Vicky M. Lopez, Crescencio Padilla, William A. Melendez, and David Serena

Appellees:

Monterey County, California, and the State of California

Intervenor-Appellee:

Wendy Duffy

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BRIEF ON THE MERITS OF APPELLEE MONTEREY COUNTY

ARGUMENT

Appellee, Monterey County, supports the appeal as filed in this case. Monterey County concurs with the essential arguments of the Appellants that state law affecting voting, insofar as such law may affect elections within a covered jurisdiction, must be precleared in the manner required under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

Monterey County is indeed "a covered jurisdiction" subject to the Section 5 preclearance requirements of the Voting Rights Act, 42 U.S.C. § 1973c. Nevertheless, Monterey County's designation as a "covered jurisdiction" was strictly due to exigent circumstances, entirely outside of the control or influence of Monterey County and its local officials and officers.

Monterey County was designated as a covered jurisdiction in 1971 pursuant to the criteria set forth in Section 4(b) of the Voting Rights Act, 42 U.S.C. § 1973b(b). The impermissible "test or device" maintained by Monterey County was a facet of state law, mandated by the State of California as a part of the State's comprehensive elections law and required to be administered by every county in the state. This provision of state law, a part of the State's statutory scheme since 1895, was a provision that required persons seeking to register to vote to be "able to read the Constitution in the English language and to write his name." 1895 Stats. Chap. 186. As a political subdivision of the State, Monterey County was required to comply with and implement this provision of state law.

This provision of state law was identified by the United States Attorney General as a literacy test for voting on November 1, 1968. 35 Fed. Reg. 12354 (1970).

The second half of the Section 4(b) criteria was satisfied when the Director of the Census determined that less than 50% of the voting age population in Monterey County had voted in the 1968 presidential election. 36 Fed. Reg. 5809 (1971). In 1968, Monterey County was the home of the Fort Ord Military Reservation, the Naval Post Graduate School, and the Defense Language Institute at which several thousand soldiers and officers, and their dependents, were stationed. Fort Ord was also a recruit training facility that provided initial training to several thousand soldiers prior to assignment in conjunction with the Vietnam War. (According to the 1960 Census, the total population of Monterey County was 198,351 of which 32,723 resided on Fort Ord.) In addition, Monterey County was in 1968, and still is, the home of Soledad State Prison, a prison facility that houses several thousand convicted ex-felons who are ineligible to vote. Simply stated, Monterey County was determined to be a "covered jurisdiction" solely because it implemented state law and because Monterey County was the home to several thousand members of the United States military during a time of crises as well as serving as the site of a state prison housing several thousand convicts who could not vote in the presidential election of 1968.

Monterey County is a covered jurisdiction in part because the County was required to implement a state law. At issue in this case is whether a state law that affects voting in a covered jurisdiction is required to be precleared, at least insofar as such state law affects voting

in a covered jurisdiction. Monterey County's argument is very simple in this regard: If the application of state law is sufficient for designation under Section 5 as a "covered jurisdiction," then implementation of state law, insofar as such state law affects voting in a covered jurisdiction, should be subject to the preclearance requirements of Section 5.

Monterey County is prepared to submit the various court consolidations and all implementing local ordinances as well as state laws to the Department of Justice for preclearance if this Court so requires, notwithstanding the efforts of the County and the Appellants to resolve this dispute through the implementation of a negotiated election plan as part of an overall settlement of the Appellants' case against the County. It is imperative that this Court address the critical issue of whether state laws which affect voting in Monterey County, a "covered jurisdiction" under Section 5, must be precleared before such laws can be implemented within Monterey County.

CONCLUSION

Monterey County joins with the Appellants and the United States in requesting that this Court reverse the decision of the district court and remand the matter for the entry of appropriate relief.

Dated: July 29, 1998.

Respectfully submitted,

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No. 97-1396

In The

Supreme Court of the United States

October Term, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA,

Appellants,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, et al.,

Appellees.

On Appeal From The United States District Court For The Northern District Of California

STATE APPELLEE'S BRIEF ON THE MERITS

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59 pp

QUESTION PRESENTED

Whether the severe preclearance penalty of the Voting Rights Act, expressly imposed upon those States or political subdivisions identified by the Act's coverage formulae, may be extended to restrain a non-covered State which includes within its borders a covered political subdivision.

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STATEMENT OF THE CASE

This case was previously before the Court on an interim appeal. *Lopez v. Monterey County*, 519 U.S. 9, 117 S.Ct. 340 (1996) ("*Lopez*"). It is a "coverage case," filed under Section 5 of the Voting Rights Act ("VRA" or "Act," 42 U.S.C. § 1973c), in which Plaintiffs alleged that Monterey County, one of California's 58 counties, failed to obtain required federal preclearance before consolidating seven justice courts and two municipal courts into a single countywide municipal court. Plaintiffs sued only the County, which had been determined to be a covered political subdivision, "as a separate unit," under the Act's coverage formulae. 42 U.S.C. § 1973b(a) and (b). *See* 28 C.F.R. Pt. 51, App.; 35 Fed.Reg. 12354 (July 24, 1970); 36 Fed.Reg. (No. 60) 5809 (Mar. 27, 1971). Plaintiffs successfully opposed the County's early motion to join the State as an indispensable party.

In March 1993, the District Court ruled that the challenged consolidation ordinances effected election changes when promulgated (between 1972 and 1983); accordingly, the County was directed to seek federal preclearance. The County then filed a declaratory judgment action in the District Court for the District of Columbia. However, at the urging of the United States Department of Justice ("USDOJ") and the Plaintiffs (who had intervened),[1] the

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[1] During oral argument of the interim appeal, Plaintiffs' counsel explained that Plaintiffs and USDOJ influenced the County to drop its court-ordered preclearance effort: "[S]ubsequent to that filing, *we intervened, and as a result of that intervention, as a result of discussion with the Department of Justice*, Monterey County decided that it could not meet its burden of

County dismissed its preclearance action without prejudice and returned with Plaintiffs to the coverage court in California to seek a permanent, substantive, court-ordered "remedial" election plan. As a result, several years of additional litigation ensued in the coverage court. *Lopez*, 117 S.Ct. at 345-346.

Plaintiffs and the County asked the District Court to impose an election plan that would have carved the County into race-based "electoral divisions" prohibited under State law. The State intervened in defense of its statutes and Constitution, and the coverage court declined to order Plaintiffs' requested racial divisions; instead, it enjoined municipal court elections and again directed the County to seek federal preclearance of the countywide court. The County made no attempt to resume its preclearance action, however, and Plaintiffs persisted in demanding a substantive "remedial" order from the coverage court. Eventually, in December 1994, the District Court ordered an "emergency" interim election, directing that the County be divided into four race-based divisions (three of which contained Latino majorities) for purposes of this one-time election.

In November 1995, however, the District Court recognized that this Court's decision in *Miller v. Johnson*, 515 U.S. 900, 115 S.Ct. 2475 (1995) cast "substantial doubt" on the constitutionality of race-based electoral divisions in this context. Noting that a return to the 1968 judicial election system – the status quo – was no longer feasible,

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demonstrating that several of these county ordinances did not have a retrogressive effect." Official Transcript, Oct. 8, 1996 Argument, pp. 7-8; emphasis added.

the Court directed a one-time countywide judicial election. The Court further ruled that the State should be joined as an indispensable party and permitted to seek dismissal of Plaintiffs' action:

> If the State believes that the County is only administering a State statute and that the failure to preclear the consolidation ordinances is of no significance, it can seek to lift the injunction and have this Section 5 litigation dismissed.

Nov. 1, 1995, Order at 5.

Plaintiffs appealed from the interim order directing a countywide election. During oral argument of that appeal, they admitted for the first time that no substantive harm under the VRA had been established in this coverage action. No court had yet determined whether the County's pre-1983 consolidations harmed, or enhanced, or had any effect whatsoever upon, Latino voting strength.[2]

On November 6, 1996, this Court filed its opinion in *Lopez*, 117 S.Ct. 340. The Court reemphasized the narrowly restricted jurisdiction and the limited remedial

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[2] QUESTION: And there has never been a determination that there is a substantive violation of Section 5 of the Voting Rights Act?

MR. AVILA: That is correct.

* * * * * * * *

QUESTION: [The County] dropped the suit, and so that leaves us in a posture, as of now, there's been no finding of a substantive violation of section 5.

MR. AVILA: That is correct.

Official Transcript, Oct. 8, 1996 Argument, pp. 7-8.

authority of district courts in Section 5 coverage actions, noting that a coverage court may not consider, much less purport to remedy, "retrogression" or any other substantive violation(s) of the Act. *Id.* at 348-349. The Court's remand order returned Plaintiffs' action to essentially the same status that obtained in 1993, leaving further elections enjoined and again directing the County promptly to submit its historic consolidation ordinances for federal preclearance. The Court also expressly recognized that, on remand, the State would be permitted to raise potentially dispositive threshold issues, including arguments that: (1) after the County promulgated its challenged consolidation ordinances between 1972 and 1983, "intervening changes in California law . . . transformed the County's judicial election scheme into a state plan. . . . "; and (2) "the County is not administering County consolidation ordinances in conducting municipal court elections, but is merely implementing California law, for which § 5 preclearance is not needed." *Lopez*, 117 S.Ct. at 340, 347.[3]

Plaintiffs filed a First Amended Complaint naming the State as a Defendant on October 24, 1996 (J.S.App. 83),

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[3] Appellants and the United States (collectively "Appellants") argue that their earlier *Lopez* appeal resolved issues which, in fact, the Court *expressly declined to address.* Although this Court concluded that the covered County exercised local discretion *at the time it initially passed its historic consolidation ordinances* (a fact the State has not disputed [Official Transcript, Oct. 8, 1996 Argument, pp. 35-38]), the Court never ruled on the *current* situation or the effect of intervening State law. Those questions were specifically reserved for the District Court on remand. *Id.* at 347.

and the State filed its Motion to Dismiss on November 25, 1996. The State also moved to vacate an order extending the terms of judges elected under the Court's December 1994 race-based division plan. On November 17, 1997, the District Court issued a tentative order granting the State's motions, and on December 12, 1997, the County notified the Court by letter that it had no disagreement with the tentative disposition of the State's motion to dismiss.

On December 19, 1997, the District Court issued its final order and judgment, granting the State's motions to dismiss and to vacate. The Court held that: (1) irrespective of historical County ordinances, the present countywide municipal court is a product of intervening, superseding state law, and of a precleared 1983 ordinance; and (2) the State, which has never been designated a covered jurisdiction under the Act's coverage formulae, is not subject to the Section 5 preclearance penalty. J.S.App. 1-12. Specifically, the coverage court stated that:

> [t]he plain language of [Section 5's opening clause] does not apply to an uncovered state which "enact(s) or seek(s) to administer" a voting plan in a subordinate, covered county. Further, the purpose of § 5 appears to be to target only those enactments by jurisdictions suspected of abridging the right to vote and not those put in force by a non-covered, superior jurisdiction.

J.S.App. 5. Plaintiffs' notice of appeal followed. J.S.App. 13.

STATEMENT OF MATERIAL FACTS

Under the Constitution and laws of California, the State has plenary power over its judicial system of trial and appellate courts. *See generally* Cal. Const., Art. VI, and § 5; Cal. Gov. Code, §§ 68070, et seq. [general administrative provisions]; 71001, et seq. [Municipal Courts]; 69502, et seq. [Superior Courts]; 69100, et seq. [Courts of Appeal]; and 68801, et seq. [Supreme Court]. *And see, e.g., County of Sonoma v. Workers' Comp. Appeals Bd.*, 222 Cal.App.3d 1133, 1137 and n. 1 (1990). The Legislature has specific authority to divide counties into municipal court districts (Cal. Const., Art. VI, § 5(a)), and to "provide for the organization and prescribe the jurisdiction of municipal courts." Cal. Const., Art. VI, § 5(c).

In addition, the Constitution establishes the State's Judicial Council, charged with monitoring the condition of judicial business statewide, making recommendations, and "perform[ing] other functions prescribed by statute." Cal. Const., Art. VI, § 6. *See also* Cal. Gov. Code, §§ 68500, et seq. One such statutory function is to recommend consolidation or enlargement of judicial districts, where appropriate, to promote administrative economies. Cal. Gov. Code, § 71042.

In 1972, pursuant to this authority, the Judicial Council evaluated the County's then-existing justice courts and municipal courts. The State's recommendation, reflected in a letter from the Chief Justice of California, was that these lower courts *should be merged into a single consolidated countywide municipal court* to advance important state policies:

> It is recommended by the Judicial Council that the lower courts in Monterey County be consolidated into a county-wide municipal court district with the new court sitting full time in Salinas and Monterey and holding sessions in King City as needed.

S.A. 1 (Appx. to State's Mot. to Affirm, p.1). The report suggested that justice court districts be consolidated "[w]henever a judicial vacancy occurs in a justice court." *Id.* at 2.[4] The County thereafter followed these recommendations in increments, as judicial vacancies occurred and opportunities to merge courts arose.[5]

In 1979, the State exercised its plenary power, amending California Government Code section 73560 to prescribe the configuration and the name of a single municipal court in Monterey County:

> There is in the County of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District. This article applies to the

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[4] This recommended consolidation was consistent with a marked statewide reduction in the number of inferior trial courts. *See Comment, Trial Court Consolidation in California*, 21 UCLA L.Rev. 1081 (1974). *See also, e.g., 1991 Annual Report of Judicial Council to Governor and Legislature*, p. 104, Table 5 (S.A. 27).

[5] *See Lopez*, 117 S.Ct. at 344: "Between 1972 and 1983, the County adopted six ordinances, which ultimately merged the seven justice court districts and two municipal court districts into a single, county-wide municipal court. . . . " *And see* Cal. Gov. Code, § 71040.

> municipal court established within the judicial district which shall be known as the Monterey County Municipal Court.

Cal. Stats. 1979, Ch. 694, § 1. *See also Lopez*, 117 S.Ct. at 344, n. *; Order, J.S.App. 6. In 1983, the State further amended its statutes to permit consolidation of the County's remaining two justice courts with this State-defined municipal court, authorizing an increase in the number of judges contingent upon such consolidation. *See* Cal. Gov. Code, § 73562; Cal. Stats. 1983, ch. 1249, § 3. The County responded by passing Ordinance No. 2930, resulting in a single countywide court. That 1983 change – including the County's ordinance – received administrative preclearance from USDOJ. Order, J.S.App. 7; *see also Lopez*, 117 S.Ct. at 345.[6]

In 1994, California's voters adopted Proposition 191, thereby amending their Constitution to abolish *all* justice courts throughout the State. Cal. Const., Art. VI, §§ 1, 5(b).[7]

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[6] USDOJ concedes that it precleared Ordinance 2930, "the final consolidation in Monterey County." June 1998 Brief for U.S. as Amicus ("USDOJ Brief"), p. 27, n. 9. *See also* Jan. 30, 1997 U.S. Amicus Brief in Response to State's Motions, at p. 7, n. 5; May 1996 Brief for the U.S. as Amicus in the interim appeal, Case No. 95-1201, at p. 15, n. 10. *And see* March 1998 U.S. Amicus Brief in this appeal, at p. 3.

[7] Similarly, in the June 2, 1998 statewide Primary Election, California's voters adopted Proposition 220, which "permits superior and municipal courts within a county to consolidate their operations if approved by a majority of the superior court judges and a majority of municipal court judges in the county." *Existing municipal courts in such a county "would be abolished. . . ."* Cal. Primary Election Ballot Pamphlet, Analysis of Proposition 220, S.A. 39; emphasis added. Cal. Const., Art. VI, §§ 5(e), 6, 23.

SUMMARY OF ARGUMENT

Section 4 of the VRA provides specific, precise, and exclusive criteria, or coverage formulae, which identify those states or political subdivisions made subject to the severe "preclearance" penalty of Section 5. A governmental unit so identified is presumed to have engaged in past persistent, systematic, and ingenious voting discrimination; under Section 5, therefore, such a suspect unit may not "enact or seek to administer" new voting changes without first obtaining federal permission. If a covered jurisdiction devises and attempts to implement a voting change without preclearance, USDOJ or private parties may file an action, a "coverage case," in a 3-judge federal district court to enjoin the proposed change pending preclearance.

In the present coverage case, Plaintiffs have alleged that amendments to the statutes and Constitution of a non-covered governmental unit (the State of California) are ineffective and subject to preclearance solely because a political subdivision therein (Monterey County) was independently identified as a covered jurisdiction under the Act's coverage formulae. Prior to this case, as USDOJ acknowledges, no court had directly considered this question.[8]

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[8] At the District Court's December 16, 1997, Hearing on Tentative Order, Mr. Cal G. Gonzales, counsel for USDOJ, explained: "[T]his case, and the argument raised here, are first impression. We know of no cases, or no argument out there, *there is no case law that explicitly discusses the issues that are confronted by this court."* Transcript at p. 37; emphasis added. *See also* March 1998 U.S. Brief at 19: "The Court has never addressed whether or how that 'lack of discretion' concept would apply to

The District Court's unanimous holding below – that Section 5 coverage extends only to the legislative and administrative acts of identified covered units (J.S.App. 4-5 and n. 1) – is dictated by the plain language and structure of the Act itself and promotes the Act's underlying purposes and policies. It is also consistent with this Court's decisions, with rules of statutory construction, with common sense, with principles of federalism, and with analyses of the Act set forth in the relevant House and Senate Reports accompanying the bills that, in 1965, became the VRA.

Appellants' proposed establishment of "partially covered jurisdictions," on the other hand, is nowhere articulated in the Act and flies in the face of the statute's clear and unambiguous language. It would extend the preclearance penalty far beyond the Act's targeted jurisdictions, and far beyond any predicate wrongdoing. Further, although Appellants' proposed construction would upset the normal balance of powers between the federal government and the sovereign States, Appellants cannot cite anything like the "clear and unmistakable" statutory expressions of congressional intent necessary before such a construction would be permitted; rather, the Act and its legislative history plainly reflect a contrary intent.

Accordingly, the District Court correctly concluded that enactments and executive decrees of a non-covered

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a situation in which a covered political subdivision must administer voting changes under *state* law." Emphasis in original.

State, including those which currently dictate the countywide municipal court in Monterey County, are not subject to federal preclearance. The District Court's unanimous Orders and Judgment of Dismissal must therefore be affirmed.

ARGUMENT

I.

THE CURRENT COUNTYWIDE COURT IS DICTATED BY STATE LAW AND PRECLEARED ORDINANCE

By the time Appellants filed their Section 5 coverage action in late 1991, the targets of their challenge – historic consolidation ordinances adopted by the County between 1972 and 1983 – had become immaterial. Rather, as the District Court correctly found, *by 1991* Monterey's countywide municipal court was a product of intervening state law: "Superseding changes in California law have converted the County's judicial election scheme into a state plan. . . . " Order, J.S.App. 6. The superseding effect of state law was underscored in 1994, when justice courts – which constituted seven of the County's nine inferior courts in 1968 (*Lopez*, 117 S.Ct. at 343) – were altogether eliminated from the State's judicial system by constitutional amendment.[9]

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[9] USDOJ has argued that, absent the 1983 consolidation, Proposition 191 would simply have changed existing justice courts into independent municipal courts (March 1998 U.S. Brief at 18, n. 8), but this claim overlooks the State's constitutional restrictions on the size and configuration of municipal courts. *See Lopez*, 117 S.Ct. at 344. Similarly, in now accusing the District

The Court's finding is solidly anchored in law and fact. As noted above, the California Constitution vests in the Legislature the power to divide counties into municipal court districts "as provided by statute" and to direct their organization. Cal. Const., Art. VI, §§ 5(a),(c); Order, J.S.App. 6. In 1979, the Legislature exercised this power by prescribing, in clear terms, a single municipal court for the County "on and after the effective date of this section. . . . " Cal. Gov. Code, § 73560; Cal. Stats. 1979, Ch. 694, § 1.

Prior to this 1979 State directive, to be sure, the County itself had passed various ordinances to merge and rename inferior courts, pursuant to authority delegated under California Government Code 71040, and had implemented these changes without federal preclearance. *See* Order, J.S.App. 2; *Lopez*, 117 S.Ct. at 344-345. But the Legislature's statutory establishment of a new municipal court in 1979 plainly superseded any prior alterations made by the County, rendering those changes, and any related preclearance issues, entirely moot. *See, e.g., City of Monroe, et al. v. United States*, ___ U.S. ___, 118 S.Ct. 400, 401-402 (1997) [local covered jurisdiction's obligation to preclear changes in local charter *ceases* after enactment of superseding and controlling statewide legislation]; *Young, et al. v. Fordice, et al.*, 520 U.S. 273, 117 S.Ct. 1228 (1997) [covered jurisdiction not required to seek preclearance of

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Court of "misapprehending" the impact of Proposition 191 on Monterey County (USDOJ Brief at p. 27, n. 9), USDOJ overlooks the District Court's very careful and accurate use of the subjunctive mode in describing what surviving justice courts "would necessarily have become" after Proposition 191 *if they had not already been consolidated* in 1983. *See* J.S.App. 8.

change imposed by superior power, except to extent covered jurisdiction retains and exercises discretion in implementation].[10]

The Legislature's 1979 statutory amendment " '*repeal[ed] the existing provisions* relative to the municipal court in Monterey County *and enact[ed] new provisions establishing a single judicial district for the municipal court* in Monterey County. . . . ' " Order, J.S.App. 6, quoting official Digest (AB 628); emphasis added. *See also* J.S.App. 32. The supremacy of the State's later enactment is quite

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[10] Appellants describe as "a key issue on this appeal" the question whether "County ordinances enacted prior to 1983 [received] federal preclearance." (Appellants' Merits Brief ["MB"] at 8.) But that is not an issue here at all, nor was it an issue in Appellants' earlier appeal. The District Court never found, nor does the State contend, that USDOJ's undisputed preclearance of Ordinance 2930 in 1983 served also to preclear earlier county ordinances. Neither did the District Court ever suggest that those prior ordinances, *when passed by the covered County*, were in any way "immune" or "exempt" (Appellants' words) from the preclearance requirement. Rather, the District Court's clear holding – consistent with this Court's opinions – is that preclearance issues and obligations concerning those earlier ordinances *were later rendered moot* in 1979, when a superior, non-covered jurisdiction (the State) repealed existing laws and enacted a superseding state law that controlled "on and after [its] effective date," leaving the County with no discretion and the prior ordinances with no effect. (J.S.App. 6-8; *and see Monroe*, 118 S.Ct. at 401-402; *Young*, 117 S.Ct. 1228.) As the coverage court found: "The [countywide] district was created by the 1979 [state] amendment to section 73560 and [by] County Ordinance 2930. However, the 1979 amendment did not need preclearance, and Ordinance 2930 was precleared." J.S.App. 8, n. 4.

clear.[11] Cal. Const., Art. VI, § 5 [Legislature's authority over municipal courts]; Art. XI, § 1(a) [counties are "legal subdivisions of the State"]; Art. XI, § 1(b) ["Legislature shall provide for county powers"]. *And see, e.g.*, Cal. Gov. Code § 71001 [prior laws relating to municipal courts remain in effect "until altered by the Legislature"]. "Any local law that directly conflicts with state legislation is void." *Galvan v. Superior Court*, 70 Cal.2d 851, 856 (1969); *accord, Building Industry Assn. v. City of Livermore*, 45 Cal.App.4th 719, 724 (1996); *Cedar Shake & Shingle Bur. v. City of Los Angeles*, 997 F.2d 620, 623 (9th Cir. 1993).[12]

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[11] In repeatedly claiming that the State merely "ratified" or "incorporated" County policy choices here, Appellants utterly ignore the State Judicial Council's 1972 report, which unquestionably establishes that countywide consolidation of Monterey's inferior courts was *the State's* policy choice, in which the County acquiesced. S.A. 1-26; *and see* S.A. 27; J.S.App. 7. The State Legislature is manifestly not an instrumentality of or subordinate to the Board of Supervisors of a single county, and the State's 1979 amendment to Cal. Gov. Code § 73560 does not reference, much less "incorporate," any County ordinances. Further, it is patently absurd to suggest that, when the statewide electorate voted to adopt Proposition 191 in 1994 (thereby eliminating *all* justice courts throughout California), they did so merely to endorse or ratify the previous elimination of justice courts in Monterey County – whose population of 355,660 is less than 1.2 percent of the State's nearly 30 million total. *California Statistical Abstract 1995*, p. 19, Table B-5.

[12] The County agrees that Cal. Gov. Code § 73560, which now prescribes a single countywide municipal court district, "does not allow Monterey County to modify and consolidate municipal or justice court districts." County Ans. to Amended Comp., p. 3, ¶ 5. S.A. 30-31. The County also acknowledges that it "is a political subdivision of the State," and that State statutes "are binding and enforceable against [it]." *Id.* at p. 4, ¶ 15. S.A. 33.

In 1983, the Legislature further amended state law to permit the County to merge its two remaining justice courts into the municipal court. Cal. Gov. Code, § 73562; Cal. Stats. 1983, ch. 1249, § 3. Both the State's 1983 amendment and the County's corresponding 1983 consolidation ordinance received federal preclearance; hence, there are no remaining Section 5 issues associated with that final step in the unification process. *See* Order, J.S.App. 6-7; *and see* note 6, *ante*. Further, the subsequent elimination *by the State* of all justice courts in every county, through adoption of Proposition 191 in 1994, would have resulted in a countywide municipal court in Monterey County even in the absence of the County's 1983 ordinance. J.S.App. 8; Cal. Const., Art. VI, § 5. In either event, as the District Court correctly determined: "The County, as a subordinate jurisdiction of the State, lacks the discretion to choose a voting plan that does not involve a county-wide district." J.S.App. 9.

Thus, there is abundant support for the District Court's determinations that: (a) the countywide municipal court is presently, and was in 1991, a state plan, ordained by state law; and (b) to the extent that the County's 1983 consolidation ordinance changed the municipal court from its 1979 configuration to its present countywide status, that ordinance was precleared by USDOJ. These findings must be affirmed on appeal.

II.

THE STATE OF CALIFORNIA IS NOT A COVERED JURISDICTION

The State is not a designated covered jurisdiction; it has never been identified, under any coverage formula, as a covered "State or political subdivision" subject to Section 5's preclearance penalties. *See* 28 C.F.R., App. to Part 51. The District Court's decision is, in this respect, undisputed and unimpeachable. J.S.App. 5 and n. 1.

III.

THE ACT'S PLAIN LANGUAGE LIMITS APPLICATION OF THE PRECLEARANCE PENALTY TO STATUTORILY DESIGNATED STATES OR POLITICAL SUBDIVISIONS

A. Section 5 Expressly Incorporates The Act's Coverage Formulae

Congress has provided specific formulae in Section 4(b) to determine which governmental bodies are subject to the preclearance penalty. According to the Act's plain language, federal preclearance is required *only as to voting changes initiated by an identified covered jurisdiction* – i.e., a "State or political subdivision" designated by USDOJ and the Census Bureau as coming within the statutory coverage formulae. Section 5's opening sentence defines the reach of that preclearance requirement as follows:

> Whenever *a State or political subdivision . . . with respect to which the prohibitions set forth in section 1973b(a) [Section 4(a)] of this title based upon determinations made under the second sentence of section 1973b(b) [Section 4(b)] of this title are in effect* shall enact or seek to administer any [voting change] . . . *such State or subdivision* may institute an action . . . [for preclearance] . . . . : *Provided,* That such [voting change] . . . may be enforced without such proceeding if [it] . . . has been submitted by the . . . *State or political subdivision* to the Attorney General and the Attorney General has not interposed an objection. . . .

Emphasis added. It follows, of course, that *unless* a State or subdivision has been determined to be a covered jurisdiction under Section 4(b), or is a subordinate subdivision or "instrumentality" of such a covered jurisdiction,[13] it remains free to "enact" or to "seek to administer" voting changes without prior permission from USDOJ or the federal courts. *See* J.S.App. 4-5.

B. Individual Subdivisions Are Covered In The Disjunctive, As "Separate Units" From Their States

Other plain language in the Act further supports the District Court's holding in this respect. For example, throughout Sections 4 and 5, the Act consistently refers to coverage of a "State ***or*** political subdivision," in the disjunctive. As USDOJ argues in a different context, Congress' use of the disjunctive in this manner signifies an intent that the two terms be given different meanings; the District Court has done so here. *See Bailey v. United States,* 516 U.S. 137, 145-146 (1995). Appellants ignore this

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[13] *See United States v. Board of Commissioners of Sheffield, Alabama,* 435 U.S. 110 (1978) (*"Sheffield"*) and *City of Rome v. United States,* 446 U.S. 156 (1980), discussed *infra.*

distinction when they argue that coverage determinations as to a political subdivision should be construed as also reaching a State which, they concede, is otherwise "not covered."

The flaws in their argument are further revealed by the Act's express provision that the County, as a political subdivision, has been captured by the coverage formulae and made subject to the preclearance penalty only ***"as a separate unit."*** Sec. 4(a) (42 U.S.C. § 1973b(a)); emphasis added. Appellants ignore this statutory language as well. Yet their theory of construction – i.e., that the State, merely because it is a superior jurisdiction, must be deemed included in the political subdivision's coverage – is simply untenable in light of Congress' explicit limitation on such coverage.

The word "separate," as an adjective, means "[i]ndividual; distinct; particular; disconnected." *Black's Law Dictionary*, 1364 (6th Ed. 1990). The more extensive definition provided in *Random House Webster's Unabridged Dictionary*, 1746 (2d Ed. 1997) confirms this normal usage and common-sense understanding of the term:

> *-adj.* **13.** detached, disconnected, or disjoined. **14.** unconnected; distinct; unique: *two separate questions.* **15.** being or standing apart; distant or dispersed . . . **16.** existing or maintained independently: *separate organizations.* **17.** individual or particular: *each separate item.* **18.** not shared; individual or private: *separate checks; separate rooms.* **19.** (*sometimes cap.*) noting or pertaining to a church or other organization no longer associated with the original or parent organization.

If Congress' inclusion of the phrase "as a separate unit" is to be given any recognition or effect, it must be read to mean that the County is subject to preclearance only insofar as it exercises *independent* rulemaking power or administrative discretion. Conversely, the preclearance penalty plainly cannot apply when, as here, the actions of such a subdivision are not "separate" or "disconnected" or "standing apart," but rather are required, without discretion, by the dictates of a superior, non-covered "parent" jurisdiction.

C. There Are No "Partially Covered Jurisdictions"

The phrase "partially covered state(s)," or "partially covered jurisdiction(s)," or some variation thereof, appears more than 20 times in Appellants' Brief. The same terms are also sprinkled liberally throughout USDOJ's Amicus Brief. But this imagined Section 5 class of "somewhat suspect" or "slightly restrained" jurisdictions is purely their creation. No matter how often they repeat these phrases, the fact remains that *the VRA nowhere establishes such a hybrid*, and that nothing in the Act suggests that a governmental unit may be *partially* suspect or that the preclearance penalty will be *partially* imposed in some patchwork fashion. Rather, the Act simply and without ambiguity provides three categories of covered jurisdictions, as determined by the coverage formulae: (1) covered states; (2) derivatively, the political subdivisions of covered states; and (3) political subdivisions covered "as a separate unit." (Sec. 4(a).) Governmental units so designated by the Act's coverage

formulae are *entirely* covered: that is, any significant voting change initiated by these covered entities, whether administratively or legislatively, must be precleared before it can be implemented. (Sec. 5.) There is no parallel provision for "partial coverage" or for "partial preclearance," however; and if Appellants wish to expand statutory coverage by *adding* such a provision, of course, their pleas must be directed to Congress, not to this Court.

In light of the Act's specific formulae for determining which governmental units are subject to the preclearance penalty, and its clear listing of all coverage categories in the bailout provision, it is ludicrous to suggest that Congress intended to include – yet made absolutely no mention of – a different set of penalized governmental units. Appellants' peculiar proffered construction is forbidden by the basic maxim: *Expressio unius est exclusio alterius. Cf. Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163, 168 (1993).

D. The Phrase "Seek To Administer" Does Not Support Appellants' Theory

Appellants ignore Section 5's express incorporation of these specific coverage formulae, and instead focus solely on Congress' inclusion of the phrase "seek to administer," arguing that these three words can *only* refer to a subdivision's implementation of State-dictated programs. Otherwise, they contend, any distinction between the term "enact" and the term "seek to administer" would be "rendered meaningless" (MB 36), and the two terms would necessarily be "interchangeabl[e]," thereby

nullifying Congress' use of the disjunctive phrase "shall enact *or* seek to administer." (USDOJ Brief 17.) But this contention is readily refuted, and was properly rejected by the unanimous District Court.

The State agrees that "enact" and "seek to administer" have different meanings; that "enact" refers to the formal process of legislation, while "administer" generally refers to less formal, executive decision making. But Appellants take an unwarranted and monumental leap when they argue that this distinction must indicate that Congress intended to abandon or revise its formulae for identifying covered jurisdictions. An infinitely more reasonable construction – consistent with the remaining language of Section 5, with Section 4, with this Court's decisions, and with common sense – is that these terms continue to refer to voting changes initiated by identified covered jurisdictions, and have nothing to do with the sovereign acts of non-covered states.

Appellants' argument simply ignores the fundamental and obvious fact that governments – including covered States and covered local subdivisions – have at least two distinct functions or branches: executive and legislative. A suspect jurisdiction might effect voting changes through formal legislation or rulemaking ("enact") *or* through discretionary executive directives ("seek to administer").[14] Congress' use of both terms merely

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[14] In California, for instance, county election officials (including those in covered counties) are vested with *administrative discretion* to make a wide variety of voting-related changes without any formal rulemaking process. *See, e.g.*, Cal. Elections Code, §§ 12220, et seq. [establishing election precinct

reflects the view that *a covered jurisdiction* may not initiate *either* kind of change without preclearance. *See, e.g., NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 178 (1985) [preclearance requirement "reaches informal as well as formal changes"]. *See also Young*, 117 S.Ct. at 1236; *Foreman v. Dallas County, Tex.*, ___ U.S. ___, 117 S.Ct. 2357, 2358 (1997).[15]

Indeed, USDOJ's own regulations concerning Section 5 expressly acknowledge this very fact, i.e., that *a covered jurisdiction* might initiate voting changes through either rulemaking *or* through the exercise of local administrative discretion – an admission that utterly contradicts the strained and expansive construction of "seek to administer" which USDOJ proposes here. Thus, Section 51.27(g) of USDOJ's regulations (28 C.F.R. § 51.27(g)) requires that submissions for preclearance include:

> "(g) Identification of *the person or body* responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, *administrative decision by registrar*)."

(Emphasis added. *And see* 28 C.F.R. § 51.27(c) [requiring explanatory statement if "the change affecting voting

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boundaries]; 12260, et seq. [changing precinct boundaries]; 12280, et seq. [designating and changing polling places]; 12304, et seq. [determining composition of precinct boards]; 12306, et seq. [appointing election officials]. Without the phrase "seek to administer" in Section 5, the preclearance penalty would not extend to these kinds of administrative acts by a covered unit.

[15] Appellants also describe a situation in which the phrase "seek to administer" would embrace prior *legislative* acts initiated by a covered jurisdiction: namely, whenever a covered unit attempts, in later elections, to apply *its own* past regulations that have not been precleared. (MB 45)

either is not readily apparent on the face of the documents provided . . . *or is not embodied in a document* . . ."]; emphasis added.)

If Congress had not included both terms, then a host of voting changes might have escaped the preclearance penalty merely because they did not flow from formal legislative enactments.[16] *See, e.g., Morse v. Republican Party of Virginia*, 517 U.S. 186, 116 S.Ct. 1186 (1996) [political party imposing registration fee]; *Perkins v. Matthews*, 400 U.S. 379 (1971) [changing locations of polling places].

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[16] As Appellants admit, an earlier version of Section 5 (then, Section 8 of S. 1564) addressed only formal legislative acts. (MB 18.) The opening clause of Section 8 then provided:

> Whenever a [covered] State or political subdivision shall enact *any law or ordinance imposing qualifications or procedures* . . .

Cong. Rec., Vol. 111, 89th Cong., 1st Sess. ("CR"), 28358; emphasis added. *And see, e.g.*, U.S. Code Cong. & Admin. News (1965) at 2525. In this version, Section 8 thus concerned only

> the *future enactment* of voter qualifications, etc., by States or subdivisions which failed to have 50 percent of their population registered or voting . . .

(CR 28359, Summary Analysis.) Covered jurisdictions would have been free to initiate voting changes *by administrative decree*, however – a possibility later foreclosed when the Senate substituted the phrase "or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" for the Section 8 phrase italicized above. (CR 28360) As explained in Senate Report No. 162, this revised language governed "attempts by . . . [covered jurisdictions] to alter *by statute or administrative acts* voting qualifications . . . " S. Rep. No. 162, p. 24, 89th Cong., 1st Sess., *reprinted in* U.S.C.C.A.N. p. 2562 (1965); emphasis added.

Thus, under the District Court's construction, the term "seeks to administer" plays a critical substantive role in more broadly describing changes *initiated by a covered jurisdiction*; it is neither "interchangeable" with the term "enact" nor is it "superfluous."[17]

The District Court's analysis finds powerful support in several of this Court's decisions. In *Young*, 117 S.Ct. at 1236, this Court described "administrative practices" as "practices that are not purely ministerial, but *reflect the exercise of policy choice and discretion* by [the covered jurisdiction's] officials." Emphasis added. *See also Foreman*, 117 S.Ct. at 2357 [although covered state's statute was precleared, county's exercise of discretion thereunder must also be precleared]; *NAACP v. Hampton County*, 470 U.S. at 178. Indeed, *Young's* holding – that a covered jurisdiction is not required to preclear voting changes imposed by superior powers unless local discretion is retained and exercised – appears fully to answer the question presented in this appeal. *City of Monroe*, 118 S.Ct. 400, also strongly supports the judgment below. There, a covered local jurisdiction was no longer required to seek preclearance of prior changes in its local charter

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[17] Congress' very use of the words "seek to administer," rather than simply "administer," further compels the conclusion that the covered jurisdiction *must have some choice or discretion* in initiating the administrative change before preclearance is required. *See Random House Webster's Unabridged Dictionary*, 1733 (2d Ed. 1997) [defining the verb "seek" as "**1.** to go in search or quest of: *to seek the truth*. **2.** to try to find or discover by searching or questioning: *to seek the solution to a problem*"]. Manifestly, such discretion does not exist, and no such "search" is required, when, as here, the change is *dictated* by a superior jurisdiction.

because those changes were superseded by controlling statewide legislation.[18]

In his dissenting opinion in *Beer v. United States*, 425 U.S. 130, 151-152 (1976), Justice Marshall (joined by Justice Brennan) stressed that the focus of Section 5's preclearance penalty is enactments and decrees of covered jurisdictions:

> Thus, the legislative history of the Voting Rights Act makes clear . . . that § 5 was designed to preclude new districting plans "that perpetuate discrimination," to *prevent covered jurisdictions from "circumventing the guarantees of the 15th amendment" by switching to new, and discriminatory, districting plans* the moment litigants appear on the verge of having an existing one declared unconstitutional, and promptly to end discrimination in voting by *pressuring covered jurisdictions to remove all vestiges of discrimination from their enactments before submitting them for preclearance*. [Footnotes omitted.]

(Emphasis added.)

As these cases show, the preclearance penalty applies exclusively to actions which originate in covered governmental bodies. If a local covered jurisdiction did *not* initiate or direct a particular condition and is powerless

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[18] *Perkins v. Matthews*, 400 U.S. at 394-395, is also entirely consistent with the District Court's decision here. In *Perkins*, the local jurisdiction *chose to disregard* a 1962 (pre-coverage) state law requiring at-large elections, and instead conducted elections by ward in 1965. Accordingly, that local jurisdiction's later change to at-large elections, in 1969, was found to be in the nature of a *local discretionary post-coverage change* rather than a state-imposed pre-Act change.

to modify it, then the only question is whether (a) the superior jurisdiction imposing the condition is itself a covered jurisdiction (*e.g., City of Monroe*), in which case that superior jurisdiction must obtain preclearance, or (b) the superior jurisdiction is not covered (*e.g., Young*), in which case preclearance is unnecessary.

Finally, and quite significantly, the District Court's unanimous construction of Section 5 is *precisely the construction given to that provision by Congress itself.* In its 1965 House Report accompanying the bill (H.R. 6400) and recommending passage, as amended, the House Judiciary Committee explained the purpose of Section 5 as follows:

> **Section 5**
>
> This section deals with *attempts by a State or political subdivision with respect to which the prohibitions of section 4 are in effect to alter by statute or administrative acts* voting qualifications and procedures . . .

H. Rep. No. 439, 89th Cong., 1st Sess., "Analysis of the Bill," U.S. Code Cong. & Admin. News, pp. 2457-2458 (1965); emphasis added. Exactly the same understanding of Section 5 was expressed, *verbatim*, in the Senate Report accompanying the Senate version of the bill (S. 1564), in a joint statement by 12 Members of the Senate Judiciary Committee, including the bill's manager (Sen. Hart), the minority leader (Sen. Dirksen), and several prominent sponsors of the bill. (Sens. Dodd, Long, Kennedy, Bayh, Burdick, Tydings, Hruska, Fong, Scott, and Javits.) *See* S. Rep. No. 162, p. 24, 89th Cong., 1st Sess., Joint Views of 12 Members of the Judiciary Committee Relating to the Voting Rights Act of 1965, "Analysis of the Bill," U.S. Code Cong. & Admin. News, p. 2562 (1965). These

reports leave no doubt that Section 5's preclearance penalty extends only to *attempts by covered jurisdictions* to alter voting practices; the acts of non-covered jurisdictions are unaffected. (*And see* remarks of Sen. Hart, quoted *infra* at note 33.)[19] Appellants' contrary claim – that preclearance should extend "to all voting changes irrespective of their legislative origin" (MB 37, n. 22; USDOJ Brief, 15-16) – has no foundation in the Act, its legislative history, or its underlying purpose.

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[19] *See also* H. Rep. No. 94-196, 94th Cong., 1st Sess., at p. 58 (1975), wherein the following explanation of Section 5 confirms that preclearance is required for changes "desired" and "adopted" by a covered jurisdiction, not those imposed upon it by superior jurisdictions:

> Section 5 is a stringent remedy. By, in effect, presuming that changes affecting voting *which are adopted by a covered jurisdiction* are a violation of the statutory standard, it treats all changes as unenforceable. Perhaps, it would be more accurate to say that section 5 imposes a new legislative procedure *upon a covered jurisdiction desiring to make a change affecting voting*: in addition to whatever steps are made necessary by State or *local law* for a proposed change to become law, section 5 requires federal approval.

(Emphasis added.)

IV.

APPELLANTS' PROPOSAL LACKS THE NECESSARY CLEAR AND UNMISTAKABLE STATUTORY LANGUAGE

In urging a construction of Section 5 that would restrain non-covered States, Appellants attempt to shoulder an extremely imposing burden: a burden which they have no hope of bearing. As this Court has often observed, courts may not interpret a federal statute to reduce the States' sovereign powers unless Congress has included "unmistakably clear" language to that effect in the statute itself. Courts are flatly prohibited from *assuming* or *inferring* any such intent by Congress:

> [I]f Congress intends to alter the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute." *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 [1985] . . . ; *see also Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 [1984] . . . Congress should make its intention "clear and manifest" if it intends to pre-empt the historic powers of the States, *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 [1947]. . . .

Gregory v. Ashcroft, 501 U.S. 452, 460-461 (1991), quoting from *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65 (1989); *New York v. United States*, 505 U.S. 144, 170 (1992). *And see Reno v. Bossier Parish School Board, et al.* ("*Bossier Parish*"), 520 U.S. 471, 117 S.Ct. 1491, 1500 (1997) [Court will not assume that Congress would "impose a demonstrably greater burden on the jurisdictions covered by § 5" without clear statement of intent and/or specific amendment to statute]. The purpose of requiring absolute

clarity in statutory language is to guarantee that Congress fully and carefully considered its intrusion into the States' domain, and appreciated the critical ramifications thereof upon interests of federalism:

> In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision. [Citations omitted.]

Gregory, at 461. Here, as their contrived and contorted reading of the phrase "seek to administer" suggests, Appellants cannot point to *any* congressional amendment or clear statutory statement that supports their theory.[20]

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[20] Neither can Appellants provide any non-statutory statements manifesting a clear and unmistakable intention to impose the preclearance penalty upon non-covered States. The only "evidence" Appellants proffered to the District Court of "congressional intent" was a single statement *by a partisan spokesman*, "Mr. Suitts," during a single day of Senate subcommittee hearings in February 1982, in response to a single question by Senator Hatch, who openly doubted whether a non-covered State's enactments could accurately be included in a tabulation of legislation deemed subject to preclearance. J.S. 17-18. *The witness conceded that he knew of no Supreme Court case holding that non-covered states are subject to the preclearance requirement and that he knew of no case in which that issue had been argued.* Hrgs. by Senate Subcomm. of Comm. on Judiciary, 97th Cong., 2nd Sess., Vol. 1, p. 599 (1983); emphasis added. His testimony was later briefly summarized in a Senate Report. *See* Sen. Rep. No. 97-417, 97th Cong., 2d Sess., at p. 12, n. 32 (May 25, 1982).

Although Appellants portray footnote 32 in a 239-page report as a "clear directive" from Congress, it is nothing of the sort. A careful reading of the footnote in context reveals that it is

simply an addendum to the summary of *Mr. Suitts' views*, explaining the *data compiled by his organization*. And even if that single footnote sentence could, arguendo, fairly be attributed to the Committee rather than a partisan witness, this Court has expressly held, in *Bossier Parish*, 117 S.Ct. at 1500, that such obscure references cannot remotely satisfy the requirement that Congress, if it wishes to "impose a demonstrably greater burden" on States, must do so in a clear statement and/or specific amendment. In any event, the footnote would plainly be insufficient to overcome earlier (and clearer) expressions of contrary intent by the 1965 Congress. *E.g.*, *Central Bank v. First Interstate Bank*, 511 U.S. 164, 185-186 (1994) ["the interpretation given by one Congress (or a committee or Member thereof) to an earlier statute is of little assistance in discovering the meaning of that statute [citations omitted]"].

A review of matters that *were* discussed in the extensive 1982 hearings and debates surrounding the VRA, and in the 239-page Senate Report, underscores this conclusion. *See, e.g.*, Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 Washington and Lee L. Rev. 1347 (1983). For example, members of Congress repeatedly alluded to this Court's analysis in *Katzenbach* and voiced concern that more restrictive "bailout" requirements for covered jurisdictions might render Section 5 unconstitutional. They also discussed at length the question whether to expand the Act's definition of covered jurisdictions. *E.g.*, Boyd & Markman at 1372-1374, 1380-1381, 1385, 1407-1409, 1420. In view of Congress' detailed attention to the scope of Section 5 coverage and to the availability of "bailout," Appellants' citation to Mr. Suitts' single obscure and defensive comment demonstrates an *utter absence* of congressional intent to broaden the preclearance penalty to restrict non-covered States.

V.

BECAUSE IT SEVERELY INTRUDES UPON SOVEREIGN RIGHTS, THE PRECLEARANCE PENALTY MUST BE NARROWLY CONSTRUED

The District Court's conclusion, that Section 5 targets "only those enactments by jurisdictions suspected of abridging the right to vote and not those put in force by a non-covered, superior jurisdiction," is also consistent with, if not compelled by, this Court's decisions in *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) and *Briscoe v. Bell*, 432 U.S. 404 (1977), wherein preclearance was challenged *by two covered States* as an unconstitutional usurpation of powers reserved to the States. There, the Court recognized that the preclearance requirement – which, in effect, "automatically suspends the operation of voting regulations enacted [by covered jurisdictions]" (*Katzenbach*, 383 U.S. at 335) – was an extraordinary congressional remedy that exacted severe and unprecedented "federalism costs." *See Miller v. Johnson*, 115 S.Ct. at 2493; *Katzenbach*, 383 U.S. at 358-362 [Black, J. concurring and dissenting]; *Georgia v. United States*, 411 U.S. 526, 545 and n. * (1973) [Powell, J., dissenting]. This extreme penalty was nevertheless deemed permissible for two principal reasons.

First, the Court was satisfied that Congress had carefully crafted its initial *coverage formula* to capture only those "perpetrators of evil" known by Congress to have engaged in "widespread and persistent discrimination in voting" through "obstructionist tactics" and "systematic resistance to the Fifteenth Amendment." *Katzenbach*, 383 U.S. at 328. The Court repeatedly emphasized that Congress' original Section 4(b) formula was intentionally

designed to ensnare only known persistent wrongdoers, and determined that "Congress was therefore entitled to infer a significant danger of the evil *in the few remaining States and political subdivisions covered by § 4(b) of the Act.*" *Id.* at 329; emphasis added. *And see Briscoe*, 432 U.S. at 414; A. Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights*, pp. 17, 21-22, 39, 180 (1987) ("Thernstrom").

Second, the Court emphasized that any innocent governmental unit wrongly *caught within the coverage formula, and thereby made subject to preclearance*, could readily extricate itself from the Section 5 penalty through Section 4(a) of the Act (42 U.S.C. § 1973b(a)) – the "bailout" provision – which imposed a "quite bearable" burden of proof upon such States or subdivisions. *Katzenbach*, at 332; *and see Briscoe*, 432 U.S. at 412 and n. 11.[21]

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[21] As noted *ante*, the Act's "bailout" provision, too, strongly supports the District Court's reasoning here. Under Section 4(a), jurisdictions subject to preclearance may seek a declaratory judgment that preclearance is no longer necessary. Section 4(a) describes those entities upon which the preclearance penalty is imposed (and which may, therefore, seek "bailout") as falling in three, and *only* three, categories: (1) "any State with respect to which the determinations [inclusion within coverage formulae] have been made . . . "; (2) "any political subdivision of such [covered] State . . . , though such determinations were not made with respect to such subdivision as a separate unit . . . " [the *Sheffield* situation]; and (3) "any political subdivision with respect to which such determinations have been made *as a separate unit* . . . " (Emphasis added.) No mention is made of the fourth category urged by Appellants – i.e., "any State containing one or more covered subdivisions, though no [coverage] determination has been made as to such State," – because coverage of such presumptively innocent States was not contemplated.

More recently, this Court has suggested that Section 5's preclearance punishment may be unjustified in some circumstances. *See Miller*, 115 S.Ct. at 2493. *And see Bossier Parish*, 117 S.Ct. at 1498 [noting "the serious federalism costs already implicated by § 5"]. If principles of federalism lead the Court to question application of the preclearance penalty *to covered jurisdictions*, then the penalty can have no constitutional application whatsoever *to governmental units which, like California, were never identified as suspect under the Act's coverage formulae in the first place.* Any attempt to require such presumptively innocent sovereign governmental units "to entreat federal authorities in faraway places for approval of local laws before they can become effective" (*Katzenbach*, 383 U.S. at 359, Black, J. concurring and dissenting) would be an unwarranted and impermissible intrusion into the States' sovereign domain. *See also, e.g., City of Rome*, 446 U.S. at 202 [Powell, J., dissenting] ["preclearance, like any remedial device, can be imposed only in response to some harm"].[22] The constitutional problems with such an intrusion would be even more glaring because, as USDOJ has noted, *non-covered States have no "bailout" relief available to them.* (*See* note 21, *ante*.)

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[22] *See also* Thernstrom, at 40 ("Had the original act in 1965 been less precise in its aim, had it upset the normal balance in federal-state relations in both North and South, it would not have stood up to constitutional scrutiny.") *Cf. Perkins v. Matthews*, 400 U.S. at 406-407, Black, J., dissenting: "Except as applied to a few Southern States in a renewed spirit of Reconstruction, the people of this country would never stand for such a perversion of the separation of authority between state and federal governments."

Non-covered jurisdictions may be sued under Section 2 (42 U.S.C. § 1973), of course, or under the Constitution; but Section 5 has no application.[23]

VI.

APPELLANTS' PROPOSED EXPANSION OF SECTION 5 COVERAGE FINDS NO SUPPORT IN DECISIONAL LAW

Appellants present no case law that directly supports their claim. The central notion underlying their appeal – namely, that federal preclearance requirements should be extended far beyond the Act's coverage provisions to encompass legislative enactments and administrative decrees of non-covered States – has never been addressed, much less adopted, by this Court. Rather, as USDOJ concedes, the argument raises an issue of "first impression," and (apart from the unanimous decision below) "there is no case law that explicitly discusses the issues. . . . " (*See* note 8, *ante*.) Appellants therefore resort to cases in which the issue was *not* raised or discussed,

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[23] Appellants decry the "serious loophole" they say would result from affirming the District Court, but their claim is both circular and specious. Non-covered States plainly did not fall within "the protections of Section 5" in the first place. Any "loophole" was created not by the District Court but *by Congress*, which penalized only those states or political subdivisions whose status as "presumptive wrongdoers" is established by the Act's coverage formulae.

Equally specious, and even more baffling, is Appellants' strange argument that, because Congress "failed" to amend its coverage formulae –to somehow further "exempt" non-covered States from coverage, courts must therefore conclude that such non-covered States were intended to be covered! (MB 19-20.)

and they ask this Court to *infer from the courts' silence* that there were *implied* precedential rulings therein that bolster Appellants' theory. M.B. 30-32. *And see, e.g., Shaw v. Hunt*, 517 U.S. 899, 116 S.Ct. 1894 (1996) (*"Shaw II"*); *United Jewish Organizations, etc. v. Carey*, 430 U.S. 144 (1977) (*"UJO"*). In *Shaw II*, as Appellants have admitted, "the jurisdictional issue was not addressed directly. . . . " J.S. 11.[24] And the *UJO* language cited by Appellants as "analysis" is simply a recitation of procedural history, not an appraisal of the scope of Section 5's preclearance penalty.[25]

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[24] Neither was the jurisdictional issue addressed in *"Shaw I." Shaw v. Reno*, 509 U.S. 630, 113 S.Ct. 2816 (1993). Rather, the Court merely observed that North Carolina had voluntarily submitted its redistricting plan for preclearance. *Id.* at 2820. Discussions of jurisdiction are also absent in the District Court cases cited by USDOJ: *United States v. Onslow County (N.C.)*, 683 F.Supp. 1021, 1023 (E.D.N.C. 1988) ["In this case there is no dispute that the changes at issue are covered by Section 5 and that approval has not been obtained."]; *Haith v. Martin*, 618 F.Supp. 410, 412 (E.D.N.C. 1985) [Defendants argue only that the changes were already precleared and that Section 5 does not apply to elections of judges].

[25] In describing the procedural history of *UJO*, the Court may appear to have suggested that non-covered States must submit their plans for preclearance:

> Litigation to secure exemption from the Act was unsuccessful, and it became necessary for New York to secure the approval of the Attorney General or of the United States District Court for the District of Columbia for its 1972 reapportionment statute insofar as that statute concerned Kings, New York, and Bronx Counties.

UJO, at 148-149; *and see id.* at 156-157. However, closer examination reveals that in *UJO*, as in the *Shaw* cases, the State

It is well settled, however, that such non-resolutions do not serve as precedent. *See, e.g., Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993) [where issue never squarely addressed before, and at most has been assumed, Court is free to address and decide it]; *Pennhurst State School & Hospital v. Halderman*, 465 U.S. at 119 [" '[W]hen questions of jurisdiction have been passed on in prior decisions *sub silentio*, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us.' " (Quoting from *Hagans v. Lavine*, 415 U.S. 528, 533, n. 5 (1974))]; *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 and n. 9 (1952).[26]

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had voluntarily submitted to Section 5 scrutiny, and the issue whether Section 5 could be stretched beyond covered units was not raised or litigated, or even discussed, in that proceeding. *See also United Jewish Org. of Williamsburgh v. Wilson*, 510 F.2d 512 (2d Cir. 1975). Rather, once New York's "bailout" request was denied, the *UJO* Court – without addressing or deciding the validity of New York's *voluntary* submission to Section 5 coverage – merely explained the logical consequences thereof.

[26] *Brown Shoe Co. v. United States*, 370 U.S. 294, 306-307 (1962), cited by Appellants, is not to the contrary. There, in addressing the Supreme Court's appellate jurisdiction under the Expediting Act, this Court observed that the jurisdictional issue (finality of the district court's orders) *had previously been expressly raised and resolved*, though "[o]n but few occasions. . . . " With respect to prior cases in which the jurisdictional question had been "passed over without comment," however, the Court noted that "we are not bound by previous exercises of jurisdiction in cases in which our power to act was not questioned but was passed *sub silentio*. . . . " (citing *U.S. v. L.A. Tucker Truck*).

The case of *Sheffield*, 435 U.S. 110, likewise provides no help to Appellants. *See* J.S.App. 5, n. 1. *Sheffield* turned on a quite different principle: that, when a *State* has been designated as a covered jurisdiction, then the cities and other *subordinate political subunits subject to the control of that covered State* are also deemed covered, as "instrumentalities" of a covered jurisdiction. That principle is also at the core of two cases cited by USDOJ, each of which involved a covered State. *See Dougherty County (Ga.) Bd. of Educ. v. White*, 439 U.S. 32, 46 (1978) ["Congress intended all electoral changes *by political entities in covered jurisdictions* to trigger federal scrutiny" (emphasis added)]; *NAACP v. Hampton County (S.C.) Election Comm'n*, 470 U.S. at 178 [Section 5 reaches even minor informal administrative changes initiated by county officials in covered State]. *And see City of Rome*, 446 U.S. 156 [where city's coverage derives from State's coverage, city may not take advantage of "bailout" provision unless entire covered State qualifies for "bailout"]. *See also* USDOJ Brief, 14-20.[27]

Here, in contrast, the State is plainly not a "subdivision" or "instrumentality" of, or "subordinate to," the covered County; rather, it is a superior jurisdiction,

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[27] Appellants' reliance upon the decisions in *Gaston County, North Carolina v. United States*, 395 U.S. 285 (1969) and *Apache County v. United States*, 256 F.Supp. 903 (D.C. 1966) is similarly misplaced. Those decisions did not turn on resolution of the scope of the preclearance penalty, and neither case even involved Section 5. Rather, they concerned the Act's automatic suspension of literacy tests.

whose laws now establish the countywide municipal court in Monterey County.[28]

VII.

USDOJ REGULATIONS CANNOT EXPAND THE STATUTORY REACH OF THE PRECLEARANCE PENALTY

The District Court correctly rejected Appellants' further claim that USDOJ regulations (specifically, 28 C.F.R. §§ 51.1(a) and 51.23(a)) somehow operate to bring non-covered jurisdictions within the scope of Section 5's preclearance penalty. J.S.App. 5, n. 1; *and see* MB 33-36. To the extent that these regulations may purport to expand the penalty, they defy Congress' specific coverage provisions; they undermine the sovereignty of non-targeted

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[28] Appellants also cite this Court's observation in *Allen v. State Bd. of Elections*, 393 U.S. 544, 566-567 (1969) that Congress intended Section 5 to reach "any state enactment which altered the election law of a covered State in even a minor way." (MB at 10.) The State does not dispute that Section 5's preclearance penalty has been broadly interpreted to encompass a wide variety of voting changes, whether introduced legislatively or by administrative decree. But *Allen* involved changes *initiated by two covered states* – Mississippi and Virginia – and the Court's comments plainly address only whether Section 5 permits *such covered states* to initiate "minor" voting changes without preclearance. *Allen* is perfectly consistent with the District Court's unanimous conclusion here, and lends nothing to Appellants' assertion that the preclearance penalty should be extended to enactments and administrative decrees of *non-covered states*. If *Allen* had concerned a covered subdivision ("as a separate unit") rather than covered states, the Court presumably would have described Section 5 as reaching "any *political subdivision* enactment which altered the election law of a covered *political subdivision* in even a minor way."

states; they far exceed USDOJ's authority; and they are entitled to no deference whatsoever.[29] Nor are unauthorized USDOJ regulations redeemed or given more weight merely because they were promulgated long before, or were followed in the past. *See, e.g., Bossier Parish*, 117 S.Ct. 1491 [Court invalidates regulation (28 C.F.R. section 51.55(b)(2)) long followed by USDOJ in evaluating preclearance submissions]; *New York v. United States*, 505 U.S. at 181-183 [state officials cannot consent to or ratify diminution of State's sovereignty; State's prior acquiescence in federal program does not estop it from asserting unconstitutionality thereof].

Appellants' recitation of the principle that "ambiguities" in the scope of Section 5 coverage "must be resolved against the submitting jurisdiction" (*see* J.S. 20-21) is, of course, inapposite here. That convention *presupposes* that the "submitting jurisdiction" is a covered State or a covered subdivision, and is employed only to resolve *what kinds* of voting changes initiated by such a body require preclearance. *See, e.g., NAACP v. Hampton County*, 470 U.S. at 178-179. In addressing the very different threshold issue of whether a particular governing

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[29] No deference is accorded to USDOJ regulations or interpretations not authorized by the Act and/or violative of the U.S. Constitution. *See, e.g., Bossier Parish*, 117 S.Ct. 1491 [USDOJ regulation ignores Congress' clear distinction between Section 2 and Section 5]; *Miller v. Johnson*, 115 S.Ct. 2475 (1995) [USDOJ preclearance standards promote discrimination, racial stereotyping, and unconstitutional race-based districting]; *Shaw II*, 116 S.Ct. 1894 [same]; *Bush v. Vera*, 517 U.S. 952, 116 S.Ct. 1941 (1996) [same]; *Presley v. Etowah County Comm'n*, 502 U.S. 491, 508 (1992) [USDOJ ignores limitation of preclearance penalty to voting changes].

body must submit *any* of its enactments and administrative decrees for preclearance, the Act includes specific formulae to identify and list the covered bodies, leaving no room for ambiguity. If there were ambiguity, furthermore, this Court has made it abundantly clear, in *Will*, in *Gregory*, in *New York*, in *Katzenbach*, and in *Miller*, that such ambiguity must be resolved in favor of the sovereignty of the States.

VIII.

APPELLANTS' RESORT TO SELECTIVE EXCERPTS FROM FLOOR DEBATES IS UNAVAILING

Much of Appellants' Brief is devoted to new arguments and citations concerning the legislative history of the VRA. Because these matters – principally, excerpts from the extensive floor debates and floor speeches in 1965 and suggested inferences therefrom (*see* MB at 13-26)[30] – were not previously raised, however, the District Court had no opportunity to consider or address them, and they are therefore not properly before this Court.[31] *See, e.g., Pennsylvania Department of Corrections v.*

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[30] Appellants did draw the District Court's attention to 1982 testimony of partisan witness Steve Suitts, to the summary of that testimony in a footnote to a 1982 Senate Report, and to Senator Hatch's apparent surprise and open skepticism when informed that Suitts' organization had included enactments of a non-covered state in its list of changes that, in Suitts' view, should have been precleared but were not. Reference to these materials is made in Appellants' Brief as well (MB at 27-28), and the State has addressed them at note 20, *ante*.

[31] To its credit, USDOJ places no reliance on the floor comments excerpted by Appellants.

Yeskey, ___ U.S. ___, 118 S.Ct. 1952, 1956 (1998); *Dothard v. Rawlinson*, 433 U.S. 321, 323, n. 1 (1977).

Even if Appellants were permitted to advance these new arguments, moreover, they would be unavailing for the following several reasons.

First, absent ambiguity, the Court's inquiry into the scope of the preclearance penalty must begin and end with the statutory language itself; no weight is accorded to legislative history of any kind when, as here, that statutory language is plain and unambiguous. (*See, e.g., Ratzlaf v. United States*, 510 U.S. 135, 147-148 and n. 18 (1994) [Court does not "resort to legislative history to cloud a statutory text that is clear"]; *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992) [when words of statute are unambiguous, "court's inquiry is complete"].) In Sections 4 and 5 of the VRA, Congress has provided a specific, virtually mechanical definition of those governmental units subject to the preclearance penalty – i.e., those presumptively suspect units whose legislative authority and administrative discretion with respect to voting are severely diminished by the "prior restraint" requirement to obtain federal authorization. From these same provisions, it is likewise clear that the preclearance penalty has no application to governmental units which are *not* captured within Congress' precise coverage formulae. (*See* Arg. III, *ante*.)

Second, Appellants' belated citations to legislative history – and particularly to floor comments by individual legislators or witnesses in the context of extensive hearings (*see Allen*, 393 U.S. at 569 n. 33) – would be entitled to no weight or consideration in the present

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context because Appellants are urging an expanded interpretation of the Act which, if adopted, would manifestly diminish the sovereign powers and prerogatives of non-covered States and would radically alter the "usual constitutional balance between the States and the Federal Government." As noted elsewhere in the State's brief, courts may not interpret any statute in this proposed manner unless Congress has made " . . . its intention to do so 'unmistakably clear in the language of the statute.' " *Gregory*, 501 U.S. at 460-461, quoting from *Will*, 491 U.S. at 65; *see also New York*, 505 U.S. at 170. The clear statutory language here, because it supports the District Court, stands as a complete and absolute bar to Appellants' proffered construction. (*See* Arg. IV, *ante*.)

Third, the interpretation of legislative history advocated by Appellants would run afoul of another basic rule of statutory construction: namely, that even if the Act were, arguendo, susceptible of two different interpretations, courts must construe the statute to avoid "grave and doubtful constitutional questions." (*United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909).) For California and other non-covered states that have engaged in no predicate wrongdoing – even under the presumptive criteria reflected in the Act's coverage formulae – and that lack any "bailout" option, imposition of the drastic preclearance penalty would plainly and impermissibly betray the principles of federalism and of fairness embodied in the Constitution. *See Miller v. Johnson*, 115 S.Ct. at 2493; *Katzenbach*, 383 U.S. at 358-362 [Black, J. concurring and dissenting]. *And see Bossier Parish*, 117 S.Ct. at 1498. (*See* Arg. V, *ante*.)

Fourth, the excerpts of floor speeches cited by Appellants are, by their nature, especially unpersuasive – particularly where the speakers' purpose, acting in unison with representatives of other southern states, was to accentuate the problems and intrusiveness of preclearance in an effort to eliminate Section 5, in its entirety, from the bill.[32] *See, e.g., Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394 (1951) [fears and doubts expressed by opponents "are no authoritative guide to the construction of legislation"]; *Bath Iron Works v. Director, OWCP*, 506 U.S. 153, 166 (1993) [Court gives no weight to single reference by single Senator during floor debate]. *And see National Endowment for the Arts v. Finley*, ___ U.S. ___, 118 S.Ct. 2168, 2182 (1998), concurring opn. of Scalia, J. The unreliability of such statements is even greater where, as here, they are culled from a massive record reflecting "legislative hearings and debate . . . so voluminous [that] no single statement or excerpt of testimony can be conclusive," *Allen*, 393 U.S. at 569, and n. 33, and where they directly contradict not only the plain

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[32] There is no validity to Appellants' suggestion, at MB 21, that Senator Ervin's proffered Amendment No. 135 sought only "to exclude the State of North Carolina from submitting for Section 5 review those state laws affecting the 34 counties." Rather, Amendment No. 135 proposed to "strike out sections 4 and 5 *in their entirety*," thereby eliminating preclearance requirements for all covered states and for all separately covered subdivisions. (CR 9772; emphasis added. *And see* CR 9794 [remarks of Sen. Hart].) Senator Ervin understood that Section 4's coverage formulae created an inference that "certain cities and counties in North Carolina," not the State of North Carolina, " . . . are engaged in violating the 15th amendment." (CR 9786.)

language of the Act and the views of other prominent individuals[33], but also the interpretation announced in the House and Senate Reports (*see* Arg. III, *ante*) and even the *current* interpretation of USDOJ.[34] *See, also, e.g., Wong Yang Sung v. McGrath*, 339 U.S. 33, 49 (1950) [citations to excerpts from hearings provide no help where "[t]he legislative history is more conflicting than the text is ambiguous"].) Some speakers quoted by Appellants

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[33] For example, in response to Senator Ellender's statement that the State of North Carolina was covered, Senate Majority Leader Mansfield emphasized that it was not: "Not as a State, again, only certain counties of North Carolina are covered by the bill [S 1564]." (CR 8297.) And in responding to critics of Section 5, Senator Hart, the manager of S 1564, stated with perfect clarity that the preclearance requirement "deals with attempts *by a [covered] State or political subdivision* . . . to alter voting qualifications and procedures . . . " (CR 8302; emphasis added.) Senator Hart further explained that, even if the Attorney General interposes an objection, "the State or county may still enforce *its new voting law* if it secures a declaratory judgment . . . " (CR 8303; emphasis added.)

[34] Appellants rely on rhetorical statements by Senators Ervin and Stennis and Congressman Kornegay for the proposition that statutes enacted by the state legislature of North Carolina, a non-covered State, would be a "nullity" and could have no effect unless the State first obtained preclearance. (MB 15, 17-18, 23, 25-26.) But USDOJ's approach to "partially covered States" holds that "the States themselves are not required to make preclearance submissions on behalf of either themselves or their covered political subdivisions;" rather, the obligation falls only on the covered subdivisions. (USDOJ Brief at 3.)

appear to contradict even their own statements found elsewhere in the record.[35]

And finally, it must be noted that many of the excerpts cited by Appellants actually undercut their proffered construction and support the District Court,[36] while the remainder are contradicted by many other legislators' and witnesses' statements elsewhere in the record.[37]

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[35] *Compare, e.g.*, Senator Ervin's remarks at CR 8303:

> The bill would deny 34 North Carolina counties *the right to administer their own election procedures* on the ground that less than 50 percent of their adult population voted in the last presidential election.

(Emphasis added.)

[36] Attorney General Katzenbach's quoted comment, for example, clarified that preclearance applies only to the laws of states and political subdivisions "covered by that" (MB 15); Senator Ellender clearly distinguished between the six covered states (Alabama, Louisiana, Mississippi, Georgia, South Carolina, Virginia) and "part of North Carolina" (MB 20); and general comments by "the political leadership" about the importance of the preclearance provision (MB 18-19) clearly cannot be read as *extending* that remedy beyond the bill's covered "states or political subdivisions." Further, Appellants rely on an obvious ambiguity inherent in, for example, references to "legislative bodies" or "affected states" or "sovereign powers" – terms which could embrace covered states and/or separately covered counties.

[37] *See* notes 33 and 35, *ante*.

IX.

APPELLANTS' PROPOSED EXPANSION OF THE PRECLEARANCE PENALTY WOULD NOT SERVE SECTION 5'S PURPOSES AND POLICIES

Contrary to Appellants' circular claims, dismissal of this coverage action does nothing to undercut the purpose, policy, or effectiveness of Section 5, or to "circumvent" Congress' intent. Section 5 preclearance is designed and intended only to provide remedial monitoring for those suspect jurisdictions which Congress has identified as having "resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination". *Katzenbach*, 383 U.S. at 335. The purpose and policy of Section 5 is thus entirely achieved so long as *changes devised by covered jurisdictions*, whether legislative or executive in origin, are suspended *to prevent a repetition of the covered jurisdictions' presumed past pattern of wrongdoing*. *See* J.S.App. 5 and n. 1.[38] No valid policy would be served by stretching Section 5 beyond these logical limits, and basic constitutional principles of federalism – as well as fundamental voting rights of citizens within non-covered jurisdictions – would be gravely compromised by such an approach.

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[38] The United States appears to concede this focused legislative purpose underlying Section 5 when it describes this Court's *Katzenbach* opinion, at page 335, as "(noting that 'Congress had reason to suppose that *[covered jurisdictions] might try* similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself') . . . " (USDOJ Brief at 22; italics added.)

Furthermore, Appellants' proposed expansion would yield truly bizarre and paradoxical results. Here, for example, the State would be penalized with the preclearance requirement – i.e., treated as a "presumptive wrongdoer" with a record of "ingeniously defying" federal voting rights – only insofar as its enactments and administrative decrees affect four covered counties. With respect to the other 54 counties, and the tens of millions of citizens residing therein,[39] the State would be treated as a respected sovereign whose directives are *presumptively valid*, and it would remain free to implement any voting changes without prior federal review or approval. Thus, under Appellants' unsupported theory, the State would be bifurcated, with respect to election practices, at least, and the Legislature could no longer establish statewide policy: elected state officials would still govern one segment; but the other, a four-county "mini-state," would be controlled by federal authorities (USDOJ and the Washington D.C. District Court). Such patchwork "partial coverage" scenarios are illogical, unworkable, and gravely flawed. Unless a State or subdivision falls within Congress' specific coverage formulae, in which case *any* significant voting change it initiates is subject to the preclearance penalty, it must remain free to exercise its

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[39] Hispanics constitute a significant percentage of the population in many *non-covered* California counties: 26.6% of the population of Santa Barbara County, for example; 33.3% of Colusa County; 34.5% of Madera County; 37.8% of Los Angeles County; 45.8% of San Benito County; and 65.8% of Imperial County. *California Statistical Abstract 1995*, p. 19, Table B-5. Hispanics constitute 33.6% of Monterey County's population. *Id.*

sovereign rights and powers without federal oversight and prior restraint.

CONCLUSION

For the reasons set forth above, the State of California respectfully asks this Court to affirm the District Court's unanimous December 1998 Orders and Judgment granting the State's motions and dismissing this coverage case. The State further requests that the Stay Order entered by this Honorable Court on January 23, 1998, be dissolved.

Dated: July 31, 1998.

Respectfully submitted,

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No. 97-1396

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants*,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

REPLY BRIEF ON THE MERITS FOR APPELLANTS

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REPLY BRIEF FOR APPELLANTS

Argument

Appellee State of California is unable to refute Appellants' plain language argument that the Voting Rights Act requires preclearance whenever a §5-covered jurisdiction alters its voting practices. Instead, Appellee raises an undisputed and unremarkable issue -- that the State of California is not a §5-covered jurisdiction. The relevant §5 issue, however, focuses not on the State but solely on the covered county and whether

its voting practices, regardless of their legislative source, have changed. Because it is undisputed that Monterey County's voting practices have changed, the changes are subject to §5.

The Congressional formula which initially triggered §5 coverage of Monterey County supports this plain language position and undermines the State's argument that the County's voting changes are exempt from preclearance because they are mandated by state law. That formula subjected certain counties to §5 precisely because those jurisdictions were administering a literacy test that was mandated by state law.

The State's mantra-like references to the fact that it is not a §5-covered jurisdiction are made to bolster the specious claim that application of §5 in this case would impermissibly intrude on the State's sovereignty. But issues of state sovereignty and the Tenth Amendment present no bar to this Court's holding that §5 applies to the voting changes that have occurred in the §5-covered County, regardless of whether those changes may have been initiated by the non-covered State. *See State of South Carolina v. Katzenbach*, 383 U.S. 301 (1966) (Congress's express powers under Fifteenth Amendment authorize §5 enforcement against designated jurisdictions).

Finally, even if this Court decides that state statutes effecting voting changes in covered jurisdictions are not subject to preclearance, the County's antecedent ordinances that initially effected those voting changes remain subject to preclearance. As such, the countywide judicial election scheme may not be implemented unless and until those ordinances are precleared.

I. Section 5's Plain Language Mandates That, Whenever A Voting Change Is To Take Effect In A Covered Jurisdiction, It Must First Be Submitted For Preclearance.

A. A Plain Language Reading Of Section 5 Does Not Limit Its Coverage To Legislation "Initiated" By Monterey County.

The State's "plain language" argument flatly misstates the actual wording of §5: "According to the Act's plain language, federal preclearance is required *only as to voting changes initiated by an identified covered jurisdiction*. . . ." State Appellee's Brief 16 ("State's Br.")(emphasis in original). The State is quite persistent in its effort to insert the term "initiate" into the language of §5. *See* State's Br. 20, 21, 22, and 24. But §5 simply requires that whenever a covered jurisdiction "shall enact or seek to administer any [voting change]," preclearance is required. And as Appellants have demonstrated, regardless of whether Monterey County "initiated" the change, this covered jurisdiction unquestionably "seeks to administer" a voting change.

While the term "administer" may include voting changes initiated by the covered jurisdiction, its plain language can in no way be restricted to such changes. A county "administers" voting changes that it initiates and also "administers" changes initiated by a superior jurisdiction. California law reflects this plain language interpretation of "administer." Under California law, when a state statute mandates certain elections to be conducted at the county level, the county official is directed to "administer that election." California Government Code § 74784(b); *see also* Appellants' Opening Br. 37 (other state statutes employing identical language). So, "administer" clearly encompasses county officials' implementation of voting changes mandated by state law, and any attempt to restrict its meaning to exclude such actions belies the plain meaning of §5.

But the State insists that Congress's use of the term "'seek to administer,' rather than simply 'administer,' further compels the conclusion that the covered jurisdiction" must be exercising

some discretion in administering the change; thus, according to the State, when such discretion does not exist and the change is mandated by a superior jurisdiction, preclearance is not required. State's Br. 24 n.17. The State's attempt to ascribe to the word "seek" a meaning that somehow implicates the exercise of discretion must fail. The State can point to no definition of "seek" that refers in any way to the exercise of discretion.[1]

To the contrary, this Court has stated that in the 1975 legislative extension of §5, Congress specifically intended "to provide some mechanism for coping with all potentially discriminatory enactments whose *source* and forms it could not anticipate . . . ." *Dougherty County Bd. of Educ. v. White*, 439 U.S. 32, 47 (1978) (emphasis added); *see also Foreman v. Dallas County*, 117 S.Ct. 2357, 2358 (1997) (citing 42 U.S.C. § 1973c) (§5 applies to county's actions "whether taken pursuant to a statute or not"). Accordingly, in its first opinion in this case, this Court referred to §5's requirements in a manner wholly supportive of Appellants' "plain language" approach:

> A jurisdiction subject to §5's requirements must obtain either judicial or administrative preclearance before *implementing* a voting change. *No new voting practice* is enforceable unless the covered jurisdiction has succeeded in obtaining preclearance.

Lopez v. Monterey County, 117 S.Ct. 340, 347 (1996) (emphases added) (citations omitted).

As demonstrated in Appellants' opening brief, §5 cannot be rewritten to impose a requirement that preclearance be

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[1]"[S]eek to" is a temporal reference. It refers simply to the requirement that, *prior to* administering the change, the jurisdiction must obtain preclearance.

obtained only when a covered jurisdiction "initiates" a new voting practice.[2] Section 5's plain language mandates that preclearance be obtained not only when a covered jurisdiction "enacts" or initiates a new practice but when, as here, it "seeks to administer" a voting change. The Voting Rights Act, and Congress's intent in enacting §5, demand no less.

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[2]While, given this plain language interpretation, the Court need not examine legislative history, an examination of the relevant Congressional debates reveals a fully consistent legislative intent. *See* Appellants' Opening Br. 12-29. The State challenges the reliability of this history because it refers to statements made by opponents of the Voting Rights Act. State's Br. 43-45. But this Court has found value in statements made by opponents of legislation because such statements can offer evidence of Congress's knowledge of the potential scope of legislation. *United States v. Bd. of Com'rs of Sheffield, Ala.*, 435 U.S. 110, 130-131 (1978) (*Sheffield*). And when those statements reflect an awareness that state legislation would be subject to §5 in only certain counties within a state, their relevance herein is manifest.

In its 1982 extension of §5, Congress similarly was aware that, as reflected in this Court's decisions, *see Gaston County v. United States*, 395 U.S. 285 (1969) and *United Jewish Organizations v. Carey*, 430 U.S. 144 (1977), statewide laws in North Carolina and New York were being subjected to §5 in only certain political subdivisions within those states. Thus, in its reenactment of §5 without change, Congress ratified this prevailing interpretation. *Cf. Sheffield*, 435 U.S. at 131-135 (relying on Congressional ratification of longstanding interpretation of §5).

B. The State Fails To Acknowledge That A State Statute, Over Which Monterey County Exercised No Discretion, Precipitated The Initial §5 Designation Of The County.

In enacting and reauthorizing the Voting Rights Act, Congress subjected jurisdictions such as Monterey County to §5 requirements in part because the County "maintained," *pursuant to State policy*, a literacy test for voting. *See* 42 U.S.C. 1973b(b). This provision (§4) of the Act not only contains the coverage formula for determining which jurisdictions are subject to §5's preclearance requirements but also suspended literacy tests in counties implementing such state laws. 42 U.S.C. § 1973b(a). Appellants previously demonstrated this linkage between §4 (42 U.S.C. § 1973b) and §5 (42 U.S.C. § 1973c), *see* Appellants' Opening Br. 10-12, yet the State fails to address this salient point.

In designating jurisdictions such as Monterey County for §5 coverage, Congress chose not to exempt these political subdivisions on the basis that the county administered the literacy test solely because it was mandated to do so by State policy. Rather, §5 would "apply in any State or in any political subdivision of a state" in which the above-cited factor was present and the formula applied. 42 U.S.C. § 1973b(b).

Neither Congress, in its subsequent reenactments of the Voting Rights Act, nor this Court, in its holding that Monterey County's ordinances were subject to §5, have ever questioned the propriety of the County's initial designation as a §5-covered jurisdiction. Indeed, the State of California has never contested the designation of Monterey County as a §5-covered jurisdiction on the basis that the County maintained its literacy test only because it was mandated to do so by state law.

Yet the State now claims that Appellants' plain language interpretation "would yield truly bizarre and paradoxical results" because the State's statutes would be subject to preclearance only in California's four §5-covered counties. State's Br. 47. But the principles underlying what the State calls "bizarre and paradoxical results" are virtually identical to those that Congress already contemplated when it subjected only four of California's counties to §5 on the basis that the State maintained a statewide literacy test. *See* 42 U.S.C. § 1973b(b). The State similarly criticizes Appellants' interpretation as creating a "patchwork" scenario.[3] State's Br. 47. In doing so, the State apparently ignores the fact that Congress also initially suspended those literacy tests in only certain local jurisdictions within uncovered states, a "patchwork" suspension that was approved by this Court in *Gaston County v. United States*, *supra*.

Thus, with regard to the pending statutory construction issue, the application of §5 to a covered jurisdiction even if its voting change was the result of an enactment by a superior jurisdiction is entirely consistent with this overall statutory scheme of §5. And this Court's duty is "'to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress

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[3]But, in enacting the §5 coverage formula, Congress recognized that statewide laws would impact minority voting rights more profoundly in certain counties, such as those that suffered from low voter registration or participation rate. *See* 42 U.S.C. § 1973b(b). A state law mandating at-large county election systems, for example, might have a retrogressive effect on minority voters in only such counties. Congress appropriately devised a formula that resulted in the designation of only those counties, and not the entire state, for §5 coverage.

manifested.'" *Commissioner of Internal Revenue v. Engle*, 464 U.S. 206, 217 (1984) (citation omitted); *see also Weinberger v. Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609, 631-632 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose.") (citations omitted). Simply stated, a political subdivision became subject to §5 because it "maintained" a literacy test (even if mandated by state law), 42 U.S.C. § 1973b(b), and any voting changes (even if mandated by state law) it "seeks to administer" are similarly subject to §5. This reading plainly offers the most "harmonious" interpretation of §5.

Contrary to these established canons of statutory construction, the State's argument defies §5's plain language and undermines a harmonious reading of the statute. The State would have this Court hold that, at the same time Congress *designated* Monterey County for §5 coverage because it administered a literacy test which was mandated by state law, Congress *exempted* the County's voting changes from §5 coverage as long as the changes were mandated by state law. This strained reading of the statute must be rejected.

II. Construing Section 5 In Accordance With Its Plain Language And Congressional Intent Poses No Tenth Amendment State Sovereignty Concerns.

The Voting Rights Act was enacted pursuant to Congress's authority under the Fifteenth Amendment which was "specifically designed as an expansion of federal power and an intrusion on state sovereignty." *City of Rome v. United States*, 446 U.S. 156, 179 (1980). Finding §5 of the Act to be constitutional, this Court held that "Congress had the authority

to regulate state and local voting through the provisions of the Voting Rights Act." *Id.* at 179-180.

In an earlier ruling upholding the constitutionality of §5 against a challenge that it impermissibly intruded upon state sovereignty, this Court held:

> [T]he [§5] coverage formula is rational in both practice and theory. It was therefore permissible to impose the new remedies on the few remaining States and political subdivisions covered by the formula . . .

Katzenbach, 383 U.S. at 330.

This coverage formula, of course, subjects political subdivisions to §5 on the basis of a test implemented pursuant to a state statute.[4] 42 U.S.C. § 1973b. Thus, the constitutionality of subjecting voting changes in a covered jurisdiction to §5 due to statutory action taken by an uncovered superior jurisdiction has already been decided. Consequently, contrary to Appellee's assertions, State's Br. 28-34, Appellant's plain language construction of §5 would not impermissibly impinge on the State's sovereign powers.

The State nonetheless complains that application of §5 to state statutes administered by covered counties improperly

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[4]Political subdivisions such as Gaston County, North Carolina and Monterey County, California became subject to §5 on the same basis. *See* Appellants' Opening Br. 11-12 n.9. North Carolina and California mandated implementation of statewide literacy tests. The fact that the counties had no discretion in implementing the tests mandated by a superior jurisdiction posed no barrier to the counties' designation as §5-covered jurisdictions. *See Gaston County*, 395 U.S. at 287.

impinges on its sovereignty. But by similarly imposing §5 not on an entire state but only on certain political subdivisions implementing statewide literacy laws, Congress established a direct federal regulation of those covered counties. *See* 42 U.S.C. § 1973b(b). And that method of regulation is constitutional. *Katzenbach, supra.* It defies reason to now suggest that a related Congressional directive to a political subdivision of the state -- federal preclearance of a state law implemented in a covered county -- that closely mirrors the coverage formula already found constitutional, would be deemed unconstitutional. The only improper governmental interference herein is the State's attempt to insert itself between Congress and the §5-covered counties and act as a shield against preclearance requirements.

Appellees also insist that because the State is an "innocent" party, application of §5 to state statutes administered by covered jurisdictions is constitutionally impermissible because the State has no available "bailout" relief. State's Br. 31-33. Appellees once again attempt to distract from the relevant §5 issue which focuses not on the State but on the covered jurisdiction and whether voting changes are being made within that jurisdiction. If the covered jurisdiction believes that §5 should no longer apply, that jurisdiction may seek "bailout" relief. 42 U.S.C. § 1973b(a). This scenario, in which an "innocent" jurisdiction may be affected by §5 yet denied "bailout" relief, has been upheld as statutorily mandated and as a constitutionally permissible regulation of state and local government voting practices. *City of Rome, supra.*

The State's arguments, although couched as Tenth Amendment issues of state sovereignty, really amount to a complaint that since the State has not acted in a discriminatory manner, it is unfair to subject the implementation of its statutes in covered counties to §5 preclearance. But, as Monterey County points out, it was the counties' implementation of the

state's literacy test statute that caused them to be designated as §5-covered jurisdictions. *See* Appellee County Br. 2-3. Thus, while §5 enforcement may affect the State's prerogatives in the covered counties, that is the natural, necessary, and constitutionally-permissible consequence of requiring preclearance of "any" voting changes in the covered jurisdictions.

III. Even If State Legislation Effecting A Voting Change In A §5-Covered County Is Not Subject To Preclearance, Antecedent County Ordinances That Initially Effected Those Voting Changes Remain Subject To Preclearance.

In a gross misreading of §5 precedent, the State argues that its superseding statutes have rendered moot the §5 requirement that county ordinances establishing the county-wide judicial election system are subject to preclearance.[5] State's Br. 11-15. This Court already has found that these county consolidation ordinances created the "single, county-wide municipal court." *Lopez,* 117 S.Ct. at 344. And while various state statutes also were directed at the County's judicial system, several of these laws actually "reflected changes . . . resulting from the consolidation process." *Id.* Finally, this Court held that,

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[5]The State does concede that a covered jurisdiction is subject to §5, even when its voting change is mandated by a superior jurisdiction, so long as the covered jurisdiction exercises discretion in the implementation of the change. State's Br. 12-13. The State also concedes that the County exercised discretion when it enacted its consolidation ordinances. State's Br. 4 n.3. Thus, this Court need only determine whether an intervening, unprecleared State law can moot or cure prior violations of §5.

despite the preclearance of the 1983 state statute, the antecedent consolidation ordinances are subject to but "do not appear to have received federal preclearance approval." *Id.* at 345. Thus, even if the 1979 statute is not subject to preclearance because of its legislative source, the county-wide system nonetheless cannot be implemented until the antecedent County ordinances have been precleared.

This notion that "superseding" changes in state law obviate the need for preclearance of underlying changes effected by the covered jurisdiction is unsupported by the plain language of §5 and this Court's precedents. Appellants' Opening Br. 40-46. As previously noted, the mandate to secure preclearance is "a continuing one," cannot be cured or rendered moot by subsequent voting changes, and "arises anew each time" a voting practice that incorporates the unprecleared voting changes is to be implemented. *Dotson v. City of Indianola*, 514 F. Supp. 397, 401 (N.D. Miss. 1981), *aff'd* 456 U.S. 1002 (1982). Monterey County must not be rewarded for delaying its preclearance obligations for so long that the State subsequently enacted legislation that incorporates the changes initially effected by the County's ordinances. Otherwise, the County's failure to comply with §5 would transform its violation into a successful defense against a §5 enforcement action.

City of Monroe v. United States, 118 S.Ct. 400 (1997), provides no mooring for the State's contention that the unprecleared 1979 "superseding" state legislation moots the County's obligation to preclear its prior ordinances. *See* State's Br. 12-13. The Court there held that the preclearance of a majority-vote default rule in a statewide election code precleared the use of majority voting in the City of Monroe, which had no law specifying a method of election. *City of Monroe*, 118 S.Ct. at 402. This Court reasoned that the state's preclearance submission had given the Attorney General "an adequate opportunity to determine the purpose of the [default-

rule] electoral changes and whether they will adversely affect minority voting" anywhere in the state. *Id.*

Monroe does illuminate, therefore, the applicable precedent governing when a *precleared* state statute can operate to preclear a local voting change or ordinance. The preclearance of state legislation serves to preclear local voting changes only when the "superseding" state legislation refers to such local laws "'in an unambiguous and recordable manner.'" *City of Monroe*, 118 S.Ct. at 402 (quoting *City of Rome, supra*).

Thus, applying the rule gleaned from *Monroe* and *Rome*, the 1979 statute could not possibly have "superseded" or "mooted" Monterey County's obligations under §5, since that statute was never submitted for preclearance. The only related state law which has been precleared is the 1983 statute which referred to the consolidation of the final two justice courts. *Lopez*, 117 S.Ct. at 344. But all parties agree that the submission of the 1983 statute for preclearance to the Attorney General did not "identify or describe any of the County's previous consolidation ordinances." *Id.* at 345. Therefore, under *Monroe*, the submission of the 1983 statute could not possibly have put the Attorney General on notice of the effect of the consolidation ordinances on minority voters in Monterey County, and consequently, the ordinances remain subject to preclearance.

The State also overstates the holding in *Young v. Fordice*, 117 S.Ct. 1228 (1997), by contending that this Court held "that a covered jurisdiction is not required to preclear voting changes imposed by superior powers unless local discretion is retained and exercised." State's Br. 24. The State argues that this holding "appears to fully answer the question presented in this appeal." *Id.* But the State's contentions are seriously flawed for two reasons.

First, the State overlooks a crucial distinction -- *Young* involved a covered jurisdiction's implementation of *federal* law and, in that context, preclearance may not be necessary if the jurisdiction has no discretion as to how it may implement that federal law. *Young*, 117 S.Ct. at 1239. The rationale for exempting a state's ministerial implementation of federal law -- that Congress already has had the opportunity to assess whether the voting change is retrogressive -- does not apply to a law enacted by a state rather than by Congress. *See Perkins v. Matthews*, 400 U.S. 379, 394 (1971) (holding that county's voting change was subject to §5 despite fact that change was mandated by state law and county "had no choice but to comply with the [state] statute.").

Second, *Young* distinguished between changes mandated by federal law and those that "are not purely ministerial but reflect the exercise of policy choice and discretion by [state] officials." *Young*, 117 S.Ct. at 1236. "It is the discretionary elements of the new federal system that the State must preclear." *Id.* at 1239. Thus, assuming *arguendo* that *Young's* "purely ministerial" rule applies to preclearance of *any* superseding law, not simply federal law, Monterey County was accorded significant discretion under the 1979 statewide statute incorporating the court consolidations. That state statute did not define the boundaries of the new consolidated judicial districts. Those boundary changes were defined by unprecleared county ordinances. Appellants' Opening Br. 41-42. Moreover, this Court acknowledged that the "at-large, county-wide system" which, in part, was incorporated into the 1979 statute, "'reflect[ed] the policy choices' of the County." *Lopez*, 117 S.Ct. at 348 (quoting *McDaniel v. Sanchez*, 452 U.S. 130, 153 (1981)). Given this finding, even the broadest possible reading of *Young* cannot insulate Monterey County from its §5 obligations.

Conclusion

In upholding the constitutionality of §5 of the Voting Rights Act, this Court expressed its concern that delays in effective enforcement of §5 should not inure to the benefit of the covered jurisdictions: "After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims." *Katzenbach*, 383 U.S. at 328. In a later decision, affirmed by this Court, the same principle was articulated:

> Recognizing that the Attorney General could not keep track of changes relating to voting being made, Congress put the burden on the covered jurisdictions to seek preclearance to avoid the very problem we now face. We would do violence to the heart of section 5 if we were to excuse the [covered jurisdiction's] failure to seek preclearance merely because the [jurisdiction] has been disregarding section 5 for a long time.

Brooks v. State Board of Elections, 775 F. Supp. 1470, 1481 (S.D. Georgia 1989), *aff'd* 498 U.S. 916 (1990). Monterey County's consolidation ordinances and all applicable state statutes were, and remain, subject to §5 preclearance requirements. As this Court previously admonished: "The requirement of federal scrutiny should be satisfied without further delay." *Lopez*, 117 S.Ct. at 349.

Dated: September 2, 1998

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(8)

No. 97-1396

In the Supreme Court of the United States

OCTOBER TERM, 1997

VICKY M. LOPEZ, ET AL., APPELLANTS

v.

MONTEREY COUNTY, CALIFORNIA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANTS

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QUESTION PRESENTED

Whether a county covered by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, may administer voting changes put in place by county ordinances without obtaining either administrative or judicial preclearance of those changes, on the ground that the State, which is not covered by Section 5, later enacted those changes into state law.

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INTEREST OF THE UNITED STATES

This case involves the construction of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. Whenever a jurisdiction covered by Section 5 "shall enact or seek to administer" any change in voting practices or procedures, it must obtain either administrative preclearance of the change from the Attorney General or judicial preclearance from the United States District Court for the District of Columbia. The Attorney General is also authorized to bring suit to enjoin the implementation of unprecleared voting changes. The decision in this case may substantially affect the Attorney General's administrative and enforcement responsibilities under Section 5. The United States has participated as *amicus curiae* in this case in

the district court and on the prior appeal in this Court, see *Lopez* v. *Monterey County*, 117 S. Ct. 340 (1996).

STATEMENT

1. This Court's prior opinion in this case, *Lopez* v. *Monterey County*, 117 S. Ct. 340 (1996), sets forth much of the case's procedural history. Monterey County, California, is one of four counties in California covered by Section 5 of the Voting Rights Act of 1965 (Act), 42 U.S.C. 1973c. See 28 C.F.R. Pt. 51 App. Monterey County was designated as a covered jurisdiction in 1971 pursuant to the criteria set forth in Section 4(b) of the Act, 42 U.S.C. 1973b(b). The Attorney General identified California as a State that had in effect a literacy test for voting on November 1, 1968, see 35 Fed. Reg. 12,354 (1970), and the Director of the Census determined that less than 50% of the voting age population in Monterey County had voted in the 1968 presidential election, see 36 Fed. Reg. 5809 (1971). As a consequence of those determinations, Section 5 requires Monterey County to obtain either administrative or judicial preclearance of any voting practice in the County different from the practices in effect on November 1, 1968. See *Lopez*, 117 S. Ct. at 343.

Because the Director of the Census did not find that the rates of voter registration or participation in California as a whole fell below 50% of the statewide voting age population at the relevant times listed in the statute, the State of California itself is not covered under Section 5 as a State. Thus, the only parts of California subject to the preclearance requirements of Section 5 are the four counties where rates of voter registration or participation were less than 50% of the voting age population. See 42 U.S.C. 1973(b); 28 C.F.R. Pt. 51 App. Monterey County would not have been covered absent the State's maintenance of an English literacy voting test, which was in place until the

California Supreme Court struck it down as unconstitutional in 1970, see *Castro* v. *State*, 466 P.2d 244.

California is one of seven "partially covered" States, *i.e.*, States in which only some political subdivisions are covered by Section 5. The other six such States are Florida, Michigan, New Hampshire, New York, North Carolina, and South Dakota. 28 C.F.R. Pt. 51 App.[1] Those seven States are not considered covered jurisdictions themselves. Therefore, although changes that are enacted or administered in the covered political subdivisions in those States must be precleared, the States themselves are not required to make preclearance submissions on behalf of either themselves or their covered political subdivisions. The Attorney General's guidelines implementing the administrative preclearance provisions of Section 5 provide generally that the chief legal officer or other appropriate officer of a covered jurisdiction (including a political subdivision of a State) shall make submissions on behalf of that jurisdiction. 28 C.F.R. 51.23. When voting in one or more covered political subdivisions in a State will be affected by state legislation, the guidelines permit the State to make the Section 5 preclearance submission on behalf of the covered subdivisions. *Ibid.*[2]

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[1] Ten other States were at one time partially covered by Section 5 in similar fashion but are no longer covered because they successfully obtained a declaratory judgment under the "bailout" provision of Section 4(a) of the Voting Rights Act, 42 U.S.C. 1973b(a), terminating coverage under Section 5.

[2] During the time in which political subdivisions in the seven partially covered States have been subject to the preclearance requirements of Section 5, at least 1300 state laws affecting voting in covered political subdivisions in those States have been submitted to the Department of Justice for preclearance. The Department has declined to make determinations under Section 5 when the submitted state legislation has no effect on voting in any of the covered counties.

2. On November 1, 1968, Monterey County had nine inferior trial court districts. Two of the districts were municipal court districts, each served by two judges. The other seven court districts were justice court districts, each served by a single judge. As constituted at that time, municipal courts served jurisdictions of more than 40,000 people; justice courts, which were served by part-time judges who did not need to be members of the bar, were not courts of record. 117 S. Ct. at 343; see generally D. Minteer, *Trial Court Consolidation in California*, 21 UCLA L. Rev. 1081, 1083-1090 (1974). Each of the municipal and justice courts operated independently. Judges for each court were elected by the voters of their respective districts, and served only the judicial district in which they were elected. *Lopez*, 117 S. Ct. at 343-344.

Under a California law enacted in 1949, the state legislature delegated to the board of supervisors of each county the authority to divide counties into judicial districts, as well as to change district boundaries and create new districts. Cal. Gov't Code Ann. § 71040 (West 1997); Minteer, *supra*, 21 UCLA L. Rev. at 1083 n.12. Under that authority, Monterey County adopted between 1972 and 1983 six court consolidation ordinances that ultimately merged the seven justice court districts and the two municipal court districts into a single, county-wide municipal court that was served by nine judges whom Monterey County residents elected at large.[3] During the same period, the

[3] See generally J.S. App. 90-95. On November 1, 1968, Monterey County had seven justice and two municipal court districts. Monterey County Ordinance No. 1917, adopted in 1972, consolidated two of the justice courts, leaving two municipal and six justice courts. J.S. App. 56-57. Ordinance No. 1999, adopted in 1973, again consolidated two justice courts, leaving two municipal and five justice courts. J.S. App. 58-59. Ordinance No. 2139, adopted in 1976, adjusted boundaries of the municipal courts and two justice courts and consolidated three of the justice courts with the municipal courts, leaving two municipal courts and two justice courts. J.S. App. 62-64. Section 5 of Ordinance No. 2212, adopted in 1976, established a new justice court, leaving two municipal and three justice courts. J.S. App. 68-70. In 1977, a state statute was enacted that converted one of the county's justice courts into a municipal court. J.S. App. 30. Ordinance No. 2524, enacted in 1979, consolidated the three municipal courts into one municipal court, and did not affect the two justice courts. J.S. App. 74-76. The final consolidation ordinance, Ordinance No. 2930, consolidated the two remaining justice courts with the municipal court, resulting in one county-wide inferior trial court, Monterey County Municipal Court, served by nine judges. J.S. App. 77. A tenth judge was added by a county resolution enacted in 1988. J.S. App. 81-82.

County also passed other ordinances changing the boundaries of the various judicial districts. See J.S. App. 90-94. The County did not seek Section 5 preclearance for any of these changes affecting voting. *Lopez*, 117 S. Ct. at 344.

Some of the County's changes to its judicial districts were subsequently enacted into state law. *Lopez*, 117 S. Ct. at 344 & n.*. For example, on June 5, 1979, the Monterey County Board of Supervisors adopted Ordinance No. 2524, which consolidated the Monterey Peninsula Judicial District, the North Monterey County Judicial District, and the Salinas Judicial District into a single municipal court district to be called the Monterey County Municipal Court District. J.S. App. 74-75. As a result of that consolidation, the County was left with one municipal court district and two justice courts. Later that year, the State enacted that consolidation into law when the California legislature amended Section 73560 of the California Government Code. 1979 Cal. Stat. ch. 694; J.S. App. 32-33.

Similarly, on August 2, 1983, Monterey County enacted Ordinance No. 2930, which consolidated the last two justice court districts with the remaining municipal court district in Monterey County, and the State subsequently passed legislation authorizing that consolidation. *Lopez*, 117 S. Ct. at 344; J.S. App. 34-35, 94. That state legislation was enacted in September 1983 after the County requested the assistance of the state legislature in passing "our [the County's] municipal court staffing bill." Exh. 15 to Plaintiffs' Motion for Summary Judgment (Oct. 9, 1992), App., *infra*, 1a. In addition, 12 years after Monterey County eliminated its justice courts, the State adopted a constitutional amendment eliminating all justice courts. Cal. Const. art. VI, § 5; J.S. App. 8.

Although the County did not submit for preclearance any of the ordinances reorganizing its judicial election system, the State did submit for preclearance the 1983 state law reflecting the changes enacted in County Ordinance No. 2930 (consolidation of the last two justice court districts with the single remaining municipal court district). *Lopez*, 117 S. Ct. at 344; J.S. App. 34-35. In response to the Attorney General's request for additional information about the state law, the State submitted Ordinance No. 2930. The State did not, however, bring the previous consolidation ordinances to the Attorney General's attention. *Lopez*, 117 S. Ct. at 344-345. Thus, the only voting change affecting Monterey County that was submitted for preclearance was the consolidation of the last two remaining justice courts with the municipal court, which by that time had been unified as a result of the prior ordinances that had never been precleared. This Court found on the prior appeal that, although the Attorney General's failure to object to the 1983 legislation may

have precleared that ultimate consolidation, the Attorney General had not precleared the previous consolidations. *Id.* at 345.

3. On September 6, 1991, appellants brought this action in the United States District Court for the Northern District of California, alleging that the County was in violation of Section 5 by holding judicial elections under ordinances that had never received either administrative or judicial preclearance. On March 31, 1993, the district court held that the consolidation ordinances were voting changes that had not been precleared as required by Section 5, and it directed the County to seek preclearance. The County then brought a judicial preclearance action in the United States District Court for the District of Columbia, but voluntarily dismissed that action after stipulating that it was unable to show that the ordinances did not have a retrogressive effect on Latino voters. *Lopez*, 117 S. Ct. at 345.

Although the County and appellants reached tentative agreement on new election plans and submitted several such plans to the district court for review, the State objected to the plans because (it contended) the plans would contravene state constitutional provisions prohibiting division of cities into separate municipal court districts and requiring electoral and jurisdictional bases of municipal court judgeships to be coextensive. See Cal. Const. art. VI, §§ 5(a), 16(b). After further proceedings revealed that the parties could not agree on a new election plan, the district court, on December 20, 1994, adopted on an interim basis one of the plans that the County and appellants had proposed. That plan contained three single-judge districts in which Hispanics constituted a majority, and a fourth

district that would elect seven judges. The Attorney General precleared the plan for use on an interim basis, and it was used in a June 1995 special election of seven judges. See *Lopez*, 117 S. Ct. at 346.

Shortly after the June 1995 election, this Court decided *Miller* v. *Johnson*, 515 U.S. 900 (1995), which held that a congressional redistricting plan for the State of Georgia violated the Equal Protection Clause. After that decision, the district court reconsidered its interim election plan. *Lopez*, 117 S. Ct. at 346. Finding that *Miller* had cast doubt on the constitutionality of the interim plan, the court ordered the County to hold the next judicial election in March 1996 as an at-large, county-wide election—the very scheme that appellants had originally challenged under Section 5 as unprecleared. *Ibid.*

4. This Court reversed, and held that the district court did not have authority to order elections pursuant to ordinances that had not been precleared under Section 5. *Lopez*, 117 S. Ct. at 348-349. The Court rejected the State's argument that the plan for at-large elections in March 1996 did not have to be precleared because it had been adopted pursuant to the district court's equitable remedial authority. The Court explained that, "where a court adopts a proposal reflecting the policy choices of the people in a covered jurisdiction[,] the preclearance requirement of the Voting Rights Act is applicable." *Id.* at 348. (internal quotation marks, ellipses, and brackets omitted). The Court concluded that preclearance was necessary here because the "at-large, county-wide system under which the District Court ordered the County to conduct elections undoubtedly reflected the policy choices of the County; it was the same system that the County had adopted in the first place." *Ibid.* (internal quotation marks and brackets omitted).

The State also contended on the previous appeal in this case that "intervening changes in California law have transformed the County's judicial election scheme into a state plan. Therefore, assert[ed] the State, the County is not administering County consolidation ordinances, * * * but is merely implementing California law, for which § 5 preclearance is not needed." *Lopez*, 117 S. Ct. at 347. This Court declined to address that contention; it noted that the district court had not made a conclusive determination on that issue and had stated that it would allow the State to "continue to seek to show that the County was merely administering California law." *Ibid.* The Court therefore left that issue, along with several others that the lower court had not yet addressed, to be resolved on remand. *Ibid.* The Court stressed, however, that "[t]he County has not discharged its obligation to submit its voting changes to either of the forums designated by Congress," and directed that "[t]he requirement of federal scrutiny should be satisfied without further delay." *Id.* at 349.

5. On remand, the State filed a motion to dismiss, arguing that, "although the consolidation ordinances were not submitted for preclearance, intervening changes in California law have converted the County's judicial election scheme into a state plan thus negating the need for preclearance." J.S. App. 3. The district court agreed with the State that Section 5 does not require preclearance of a partially covered State's laws that affect covered political subdivisions in that State, and dismissed appellants' complaint. *Id.* at 6-10.

The district court acknowledged that "a number of county ordinances did consolidate judicial districts" before enactment of the 1979 state statute codifying that consolidation, but, it concluded, "by the amendment [to state law], the State clearly dictated that Monterey County would have a single municipal court district." J.S. App. 7.

Furthermore, the court stated, the State had continued to change the County's court system in subsequent enactments. The 1983 statute that the Attorney General had precleared, for example, had increased the number of judges in the County's court system, contingent on the County's consolidation of municipal and justice courts (which was done by county ordinance in 1983), and the state constitutional amendment in 1995 had converted justice courts to municipal courts. *Id.* at 7-8. The court reasoned that "the justice courts as they existed prior to consolidation could not exist today," and that the entire consolidation should therefore be viewed as the product of state law. *Id.* at 8.

The court rejected appellants' argument that, even though the State had enacted various statutes regarding county-wide judicial election districts in Monterey County, Section 5 still required preclearance because the County "seek[s] to administer" those voting changes, within the meaning of Section 5, by holding elections under the state plans. The court acknowledged that in *Young* v. *Fordice*, 117 S. Ct. 1228 (1997), this Court held that Mississippi, which is covered by Section 5, was required to obtain preclearance of voting changes that it intended to administer in order to comply with another federal statute. But in the present case, the court stated, appellants "are not objecting to any particular procedural plan by which the County intends to administer voting for a county-wide district. They are objecting to the consolidation itself." J.S. App. 9. And, the court reasoned, "[a]lthough neither the Voting Rights Act nor any case specifically defines 'seek(s) to administer,' it is clear that it must involve some exercise of policy choice and discretion by the covered jurisdiction. The County, as a subordinate jurisdiction of the State, lacks the discretion to

choose a voting plan that does not involve a county-wide district." *Ibid.* (citation omitted).

The district court vacated its previous orders extending the terms of the incumbent judges and enjoining elections under the unprecleared ordinances. J.S. App. 9-10. On January 23, 1998, this Court issued a stay of the district court's order. J.S. 7.

SUMMARY OF ARGUMENT

The district court erred in holding that a political subdivision covered by Section 5 of the Voting Rights Act need not obtain preclearance under the Act of changes in voting practices that it administers if those voting changes also are enacted into law by a State that is not, as a State, covered by Section 5. That decision is contrary to the plain language of Section 5, which requires preclearance whenever a covered political subdivision either "enact[s] or seek[s] to administer" a voting change. The statutory language is phrased in the disjunctive, indicating that preclearance is required both when a covered political subdivision enacts a voting change, and when such a jurisdiction seeks to administer a voting change. That reading of the statute is also consistent with differences between the ordinary meanings of the words "enact" and "administer." Under Section 5, therefore, a covered political subdivision is required to obtain preclearance before administering a voting change effective in that subdivision, even if authorization for that change has been enacted into law at the state level. In the case of Monterey County, the fact that the State of California subsequently ratified the County's consolidation of its judicial districts did not obviate the County's obligation to preclear these changes when it sought to administer the consolidation of the districts.

That straightforward approach to the language of Section 5 is further supported by the legislative background to the extension of the Voting Rights Act in 1982. Before that congressional action, the Attorney General had already interpreted Section 5 to require preclearance of voting changes enacted into law at the statewide level in partially covered States, insofar as those voting changes were to be administered in covered political subdivisions within such States. The legislative history of the 1982 extension cited specific examples of voting changes in partially covered States that required preclearance because they were to be administered in covered political subdivisions, in agreement with the Attorney General's construction. Because Congress then reenacted Section 5 without change, it codified the Attorney General's construction of Section 5 into law.

The Attorney General's construction of Section 5 is, moreover, entitled to deference in light of the Department of Justice's central role and long practical experience in administering and enforcing Section 5. In particular, that experience demonstrates that the district court's decision could have serious, adverse implications for the effectiveness of Section 5. The lower court's decision suggests that local jurisdictions could easily evade the coverage of Section 5 simply by requesting that state entities enact county voting changes into state law (at least in States that are not covered as States by Section 5). That potential loophole is reminiscent of the problem that the Court perceived in *United States* v. *Board of Commissioners of Sheffield*, 435 U.S. 110 (1978), where it held that all political jurisdictions within a covered State that have any power over the electoral process are also covered by Section 5; otherwise, the Court concluded, a covered State could evade the preclearance mandate of Section 5 by routing its voting changes through its political subunits

that were not independently covered. Given Congress's particular concern, in enacting Section 5, that minority voting rights not be infringed through ingenious devices, the Court has always construed Section 5 to ensure that its preclearance requirements are not evaded through mechanisms that could have the effect of diluting its protections. That settled interpretive approach to Section 5 requires rejection of the district court's construction.

The district court also erred in concluding that preclearance was not required because the voting changes at issue in this case did not reflect the policy choices of the County (which was the source of the judicial district consolidations) but rather those of the State (which ratified the County's actions). That ruling is flawed in both its factual premise and its legal conclusion. As a factual matter, this Court has already determined on the previous appeal in this case that the voting changes "undoubtedly reflected the policy choices of the County." *Lopez* v. *Monterey County*, 117 S. Ct. 340, 348 (1996) (internal quotation marks and brackets omitted). That determination is clearly correct; the record demonstrates that the impetus for the court consolidations came from the County, even though the consolidations were also codified by the State. As a legal matter, even if the voting changes had been enacted by the State without regard to the policy choices of the County, Section 5 would require preclearance when the County sought to administer the voting changes. This case does not require the Court to address that situation, however, because in this case the record is clear that the source of the voting changes was the County, and that the State enacted the voting changes into state law only after the County had adopted them.

ARGUMENT

THE DISTRICT COURT ERRED IN HOLDING THAT MONTEREY COUNTY WAS NOT REQUIRED TO OBTAIN PRECLEARANCE UNDER SECTION 5 OF THE VOTING RIGHTS ACT BEFORE IMPLEMENTING CHANGES IN THE BOUNDARIES OF THE COUNTY'S JUDICIAL ELECTION DISTRICTS

A. Section 5 Requires Preclearance Of Any Change Affecting Any Voting Practice That Is Administered By A Covered Jurisdiction, Whether Or Not That Jurisdiction Also Enacted The New Practice

1. Section 5 of the Voting Rights Act requires preclearance by either the Attorney General or the United States District Court for the District of Columbia whenever a covered "State or political subdivision * * * shall enact or seek to administer any [voting change]."[4] As an

[4] More completely, Section 5 provides in pertinent part:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in [Section 4(a) of the Act] based upon determinations made under the first sentence of [Section 4(b) of the Act] are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on * * * November 1, 1968, * * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, [or membership in a language minority group] * * *: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission.

42 U.S.C. 1973c.

initial matter, it is undisputed that Monterey County is a "political subdivision" separately covered by Section 5, even though the State of California is not covered. See 28 C.F.R. Pt. 51 App. The Act's legislative background reflects that Congress specifically intended that Section 5 apply to "political subdivision[s]" within States not covered as a whole by Section 5, to ensure that voting changes in such subdivisions receive scrutiny under the Act. See *United States* v. *Board of Comm'rs of Sheffield*, 435 U.S. 110, 128-129 (1978) (*Sheffield*).

Because Monterey County is covered by Section 5, under the plain terms of the Act it must obtain federal preclearance before it "shall enact or seek to administer" a voting change. The language is not limited to situations—as the district court seemed to believe—in which a covered jurisdiction "seek[s] to administer" a voting change that it has enacted itself. To the contrary, the plain language of Section 5 encompasses the situation in which a covered political subdivision "seek[s] to administer" a voting change that has been enacted by the legislature of a State that is not, as a State, covered by the Act.

By using the disjunctive—"enact" *or* "seek to administer"—Congress clearly intended that those terms have different meanings in the statute. See *Bailey* v. *United States*, 516 U.S. 137, 145-146 (1995). That intent is consistent with differences between the ordinary meanings of "enact" and "administer." The term "enact" ordinarily refers to the process by which a legislative body votes a bill into law. See *Black's Law Dictionary* 472 (5th ed. 1979) (defining "enact" as "[t]o establish by law" and "enactment" as "[t]he method or process by which a bill in the

Legislature becomes a law"); *Webster's Third New International Dictionary* 745 (3d ed. 1986) (def. 2 of "enact": "to establish by legal and authoritative act: make into a law; *esp.*: to perform the last act of legislation upon (a bill) that gives the validity of law"). The term "administer," however, more commonly refers to the implementation of an established legal requirement. See *id.* at 27 (def. 1a(2) of "administer": "to direct or superintend the execution, use, or conduct of"; as in "[administered] the regulations governing interstate travel"); *Black's Law Dictionary*, *supra*, at 41 ("[t]o manage or conduct"). Under the plain language of Section 5, therefore, a covered political subdivision "seek[s] to administer" a voting change even when it executes a law enacted by the legislature of a State that is not covered by Section 5. The covered political subdivision must therefore obtain preclearance of a voting change enacted pursuant to state law before such a change may take effect within the covered jurisdiction.[5]

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[5] Somewhat different considerations apply when a political subunit administers a voting law enacted by the legislature of a State that is wholly covered by Section 5. In that situation, the State must obtain preclearance of the voting change before it can be implemented. If the voting change enacted by the State is precleared, and if the subdivision has no discretion under state law to deviate from the enacted voting change, then the subdivision need not also obtain preclearance before it is implemented. Once the state enactment has been precleared, its implementation by subdivisions required to follow state law does not involve a change in voting practices. See *City of Monroe* v. *United States*, 118 S. Ct. 400, 402 (1997) (because state law requiring implementation of majority-vote rule in a political subunit had been precleared, the subunit was not also required to seek preclearance before implementing the majority-vote rule). For example, if a covered State enacted a voting law changing the hours during which polling places are open, without affording subunits discretion to deviate from that rule, and if that enactment were precleared (and if it were clear from the State's submission that the change applied to the subunit), then the law would not also have to be precleared by each subunit that implemented the law. In that situation, the actual change affecting voting would have been submitted for preclearance by the State. By contrast, preclearance of state legislation that is merely enabling in nature, and that affords political subdivisions discretion in its implementation, does not absolve the subdivisions of their responsibility to preclear any changes they implement pursuant to such enabling legislation. See *Texas* v. *United States*, 118 S. Ct. 1257, 1260 (1998).

2. The district court concluded that a covered political subdivision need not seek preclearance when it administers a law enacted by a partially covered State. The court reasoned that, because Section 5 applies only to covered jurisdictions, and because the State is not covered as a State, the language of Section 5 "does not apply to an uncovered state which 'enact(s) or seek(s) to administer' a voting plan in a subordinate, covered county." J.S. App. 5. In the court's view, moreover, "the purpose of § 5 appears to be to target only those enactments by jurisdictions suspected of abridging the right to vote and not those put in force by a non-covered, superior jurisdiction." *Ibid.* The court therefore framed the question before it as "whether the State of California, rather than the County, 'enact(ed)' and [']seek(s) to administer' the county-wide voting plan in Monterey County." *Ibid.*

The district court's analysis is fundamentally in error. First, the court used the statutory terms "enact" and "seek to administer" interchangeably; it ignored the fact that the coverage of Section 5 is phrased in the disjunctive, and it addressed only the situation in which the State enacted and administered its own legislation, failing even to consider the possibility that the County might administer a law enacted by the State. As we have explained above, however, Congress's use of both terms indicates that it intended the terms to have different meanings,

and the ordinary meaning of "administer" (unlike "enact") certainly encompasses a political subdivision's implementation of laws enacted by other authorities. See *Bailey*, 516 U.S. at 146 ("We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning.").

This Court has previously recognized that "enact" and "seek to administer" describe distinct events. In *Perkins* v. *Matthews*, 400 U.S. 379 (1971), the Court confronted a voting change that had been enacted prior to the date specified in the Voting Rights Act, and implemented both before and after that date. In 1962, Mississippi enacted a state statute mandating a change in aldermanic elections from a ward system to an at-large system. The Voting Rights Act required preclearance of voting changes "enacted" or "administered" in Mississippi after November 1, 1964. The City of Canton, Mississippi, did not change its aldermanic election scheme as required by the state statute until 1969. The Court held that the City was required to obtain preclearance of the voting change that it sought to administer after November 1, 1964, even though the change had been made pursuant to a state statute enacted before that date, and the enactment therefore was not itself subject to the preclearance requirement. *Id.* at 394-395. See also *NAACP* v. *Hampton County Election Comm'n*, 470 U.S. 166, 178 (1985) (noting that even other changes occasioned by "an administrative effort to comply with a statute that had already received clearance" may themselves require preclearance).

Second, the district court mistakenly believed that Section 5 is directed only at those entities that are themselves suspected of discrimination, and that preclearance is necessary only if the voting change is most directly caused by a suspect jurisdiction. J.S. App. 5. Section 5

protects minority voters who reside within a covered political subdivision by denying preclearance of voting changes that have the purpose or effect of abridging their right to vote, irrespective of the source of the law that causes the discrimination. Cf. *Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32, 47 (1978) ("Congress was determined * * * to provide some mechanism for coping with all potentially discriminatory enactments whose *source* and forms it could not anticipate but whose impact on the electoral process [in a covered jurisdiction] could be significant.") (emphasis added). Under the Act, moreover, it is not the prerogative of a local three-judge court, which is charged only with determining whether changes must be submitted for preclearance, to make assumptions regarding the purposes behind those voting changes. See *Perkins*, 400 U.S. at 384-385. Rather, "[i]t is change that invokes the preclearance process." *Young* v. *Fordice*, 117 S. Ct. at 1236 (emphasis omitted).

3. The Attorney General has consistently construed Section 5 to require preclearance when a covered political subdivision "seek[s] to administer" an enactment of a partially covered State.[6] That construction is entitled to deference. The Court has given "particular deference" to

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[6] The Attorney General has consistently taken that position in litigation and has consistently prevailed. See, *e.g.*, *United States* v. *Onslow County*, 683 F. Supp. 1021 (E.D.N.C. 1988) (local legislation enacted by North Carolina General Assembly requiring staggered terms for county commissioners in a covered political subdivision held subject to preclearance requirement); *Haith* v. *Martin*, 618 F. Supp. 410 (E.D.N.C. 1985) (North Carolina legislation changing superior court judge election system held subject to preclearance requirement in 40 counties covered by Section 5), aff'd mem., 477 U.S. 901 (1986); *United States* v. *South Dakota*, Civ. No. 79-3039 (C.D.S.D. May 21, 1980) (South Dakota legislation affecting organization of elected officials in State's two covered counties is subject to preclearance requirement).

the Attorney General's construction of Section 5 in light of her "central role" in implementing the statute. *Dougherty County*, 439 U.S. at 39; see also *Hampton County*, 470 U.S. at 178-179; *Sheffield*, 435 U.S. at 131. In this case, the Attorney General's construction is not only fully consistent with "the broad scope suggested by the language of the Act," *id.* at 122, but also reflects practical concerns about the effective operation of the Act, should Section 5 be construed not to cover situations like the present one. As we explain below (pp. 22-25, *infra*), the district court's construction of Section 5 creates a significant loophole in the coverage of the Act. That loophole, if not closed, could deprive minority voters in covered political subdivisions of much of the valuable protection of their voting rights that is provided by the preclearance mechanism. This Court has recognized the need for strong effectuation of Congress's protection of voting rights in Section 5, and so has "consistently adhered to * * * principles of broad construction" of that statute. *Dougherty County*, 439 U.S. at 38. The district court's interpretation of the Act is inconsistent with those principles, and accordingly should be rejected.

4. Congress ratified the Attorney General's interpretation of Section 5 in 1982, when it extended Section 5 without change, and noted the Attorney General's interpretation with recognition and approval in the accompanying Senate Report.[7] Cf. *Sheffield*, 435 U.S. at 131-135 (relying on similar congressional ratification in 1975 of Attorney General's construction of Section 5). The Senate

[7] There was no conference report on the 1982 extension of the Voting Rights Act; the House of Representatives adopted the version of the legislation passed by the Senate. See 128 Cong. Rec. 14,933-14,940 (1982). The Court has described the Senate Report as the "authoritative source" of the legislative history for the 1982 extension of the Act. *Thornburg* v. *Gingles*, 478 U.S. 30, 43 n.7 (1986).

Report accompanying the 1982 extension of Section 5 expressed concern that, since the Act was passed in 1965, "covered jurisdictions ha[d] substantially moved from direct, over[t] impediments to the right to vote to more sophisticated devices that dilute minority voting strength," including "the use of at-large elections" and "the redistricting of boundary lines." S. Rep. No. 417, 97th Cong., 2d Sess. 10-11 (1982). The Report cited several examples of the Attorney General's objections to laws in partially covered States, including a North Carolina congressional redistricting plan "that minimized the voting strength of black voters in the Durham area" and "a South Dakota law that would have nullified the effect of a judicial decision that gave the [predominantly Indian] residents of two unorganized counties * * * the right to vote for county officials in the organized counties to which they [were] attached." *Id.* at 11 (footnote omitted). In the Committee's view, moreover, the "breadth of the continuing problem [was] perhaps best shown by the section 5 objections to statewide redistricting plans following the 1980 census," *id.* at 12, and the Report specifically mentioned the statewide redistricting plan enacted by the State of North Carolina, which is only partially covered.

The Senate Report also expressed concern that, "[i]n addition to the continuing level of objectionable voting law changes, disappointing gaps in compliance with Section 5 are significant evidence of the continuing need for the preclearance requirement." S. Rep. No. 417, *supra*, at 12. The Report cited 750 state enactments in six States that were not submitted for preclearance, and noted that, "[w]hile North Carolina, as a State, is not subject to section 5, the legislation in question affected North Carolina counties which are covered and, therefore, it should have been precleared." *Id.* at 12 & n.32.

The Senate Report thus reflects congressional agreement with the Attorney General that voting changes applicable to a covered political subdivision within a State but enacted by a State not independently subject to Section 5 must be precleared before they may be enforced within the covered jurisdiction. Cf. *Sheffield*, 435 U.S. at 132-134 (relying on similar congressional agreement with Attorney General's construction of Section 5 as applicable to all political subunits of a covered State). As in *Sheffield*, "the legislative background" of the 1982 extension of the Act is "conclusive of the question" before the Court, for "[w]hen a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation." *Id.* at 134.

B. The District Court's Construction Of Section 5 Would Allow Covered Political Subdivisions To Evade Its Requirements

As the Court has long recognized, the Voting Rights Act "was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race." *Presley* v. *Etowah County Comm'n*, 502 U.S. 491, 501 (1992) (quoting *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 565 (1969)). The Court has therefore construed Section 5 to ensure that its preclearance requirements are not evaded through devices that could have the effect of diluting its protections. *Sheffield*, 435 U.S. at 123; see also *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966) (noting that "Congress had reason to suppose that [covered jurisdictions] might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself"); S. Rep. No. 295, 94th Cong., 1st Sess. 15 (1975) (similar). Thus, "Section 5 of the Act requires review of all voting changes prior to implementation by the covered jurisdictions." *Ibid.*

The district court's construction of Section 5, if not rejected, would create a serious loophole in the Act in partially covered States. Under the district court's construction, a political subdivision covered by Section 5 could effectively evade the preclearance requirement through the simple expedient of requesting that the state legislature validate its voting changes through state enactments of local legislation. Under the practice of "local courtesy" that prevails in many state legislatures, state legislators customarily approve legislation applicable to only one political subdivision when it is sponsored by that subdivision's legislative delegation. "In many state legislatures, approval is given without question or dissent to any purely local bill that has the support of any and all legislators from the county concerned." D. Lawrence, *Local Government Officials as Fiduciaries: The Appropriate Standard*, 71 U. Det. Mercy L. Rev. 1, 27 n.91 (1993) (quoting M. Jewell & S. Patterson, *The Legislative Process in the United States* 240 (3d ed. 1977)).[8]

Indeed, in this case it appears that the California legislature ratified Monterey County's 1983 court consolida-

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[8] See also B. Miller, *Who Shall Rule and Govern? Local Legislative Delegations, Racial Politics, and the Voting Rights Act*, 102 Yale L.J. 105, 121, 128-131 (1992) (discussing local courtesy). The Court has expressed its awareness of the custom of local courtesy. See *Rogers* v. *Lodge*, 458 U.S. 613, 626 (1982) (noting that the "maintenance of [a Georgia] state statute providing for at-large elections in Burke County is determined by Burke County's state representatives, for the legislature defers to their wishes on matters of purely local application"); *City of Mobile* v. *Bolden*, 446 U.S. 55, 74 n.21 (1980) (plurality opinion); *Reynolds* v. *Sims*, 377 U.S. 533, 580-581 (1964) ("In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions.").

tion ordinance as a routine matter of local courtesy. The state legislature's amendment of the California Government Code to reflect the changes that the County had made in Ordinance 2930 followed the County's request for such state legislation by less then two months. J.S. App. 34-35; App., *infra*, 1a. The state law that followed, moreover, was not a statute of general applicability but was directed specifically to Monterey County, providing that "at such time as the Central and South Justice Court District are consolidated with the Monterey County Municipal Court District, there shall be nine judges of the Monterey County Municipal Court District." 1983 Cal. Stat. ch. 1249; J.S. App. 35. Under the construction of Section 5 advanced by respondents and accepted by the district court, the fact that the County, with the assistance of state legislators representing that area, persuaded the state legislature to ratify its consolidation ordinance would render that ordinance immune from scrutiny under Section 5.

The potential gap in coverage created by the district court's construction of Section 5 is similar to the loophole that the Court closed in *Sheffield*, and the Court should reverse here for the same reason. In that case, the Court confronted the danger that a covered State containing noncovered political subunits could evade Section 5 by implementing its voting changes through its noncovered subunits. 435 U.S. at 125. The Court construed the statute to avoid that danger, holding that, within a State covered by Section 5, all political subunits that have any power over any aspect of the electoral process are also covered by Section 5. *Id.* at 118. Justice Powell agreed with the Court's construction of Section 5 in that case because, otherwise, "[a] covered State or political subdivision * * * could achieve through its instrumentalities what it could not do itself without preclearance." *Id.*

at 139 (Powell, J., concurring in part and concurring in the judgment).

In this case the Court confronts the reverse danger: that a covered political subdivision might evade Section 5 by implementing its voting changes through the State legislature, with the aid of the local legislative delegation. Once again the Court should construe the statute to avoid the possibility of evasion, recognizing that a subdivision may "seek to administer" a voting change within the meaning of Section 5 whether the legislation establishing that voting change is enacted at the state or local level.

Indeed, if the district court were correct in its view that the legislation enacted at the state level is exempt from the Section 5 preclearance requirement in a partially covered State, then in such a State the preclearance requirement would not apply to a statewide legislative redistricting plan with a discriminatory effect on residents of a covered political subdivision. Thus, under the district court's interpretation, the redistricting plan at issue in *United Jewish Organizations* v. *Carey*, 430 U.S. 144 (1977), and the North Carolina redistricting plan mentioned in the Senate Report accompanying the 1982 extension of Section 5 (see p. 21, *supra*) might not have been subject to the Section 5 preclearance requirement because North Carolina and New York, as States, are not covered by Section 5, even though counties affected by the restricting plans were covered. Congress could not have intended to permit the protections of Section 5 to be circumvented so easily.

C. The District Court Also Erred In Concluding That Section 5 Did Not Apply Because The Changes In The County's Judicial Districts Were Nondiscretionary, Or Did Not Reflect The Policy Choices Of The County

In dismissing this case, the district court concluded that preclearance is not required because Monterey County now "lacks the discretion to choose a voting plan that does not involve a county-wide district." J.S. App. 9. The district court evidently believed that the decision to consolidate the courts in Monterey County could not be attributed to the County itself. That rationale is unavailing for two reasons.

First, even if the district court's inquiry into the exercise of discretion might have merit in another case, it is plainly misplaced here, for this Court has already found that the decision to consolidate the judicial districts in Monterey County was that of the County itself. This Court concluded, on the first appeal in this case, that the "at-large, county-wide system under which the District Court ordered the County to conduct elections undoubtedly reflected the policy choices of the County; it was the same system that the County had adopted in the first place." *Lopez* v. *Monterey County*, 117 S. Ct. 340, 348 (1996) (internal quotation marks and brackets omitted). That conclusion remains correct. On remand, the district court acknowledged that, even before the California legislature moved in 1979 to require a single municipal court district in the County, "a number of county ordinances did consolidate judicial districts." J.S. App. 7. Therefore, this case presents a circumstance in which a covered subdivision adopted voting changes that the State later codified in state law; the County exercised discretion in adopting those changes in the first instance. The voting changes at issue here therefore reflected the policy

choices of the covered political subdivision, the County (see *Lopez*, 117 S. Ct. at 348), whether or not they *also* reflected the policy choices of the State.[9]

Second, the district court's approach to Section 5 is legally flawed, because Section 5 expressly requires a covered political subdivision to obtain preclearance whenever it seeks to administer *any* voting change. See 42 U.S.C. 1973c (requiring preclearance "whenever a [covered] State or political subdivision * * * shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on [certain dates]"). "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 117 S. Ct. 1032, 1035 (1997) (citation omitted). The statute on its face contains no exemption for changes that might be described as "non-discretionary." The 1982 Senate Report also reflects agreement with that straightforward approach to the Act's language. See S. Rep. No. 417, *supra*, at 12 (recognizing that statewide redistricting plans, which allow the covered political subdivisions no discretion in the implementation of the new district boundary lines, are

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[9] The district court also noted that a 1995 amendment to the California Constitution converted all justice courts into municipal courts (J.S. App. 8), but it appears to have misapprehended the relation of that amendment to this case. The constitutional amendment did not effect any change with respect to voting in Monterey County. As we noted above (pp. 5-7, *supra*), state legislation and county ordinances had consolidated the justice courts and municipal courts in Monterey County more than a decade before that constitutional amendment, and the Attorney General precleared the final consolidation in Monterey County (although not the consolidations preceding it). See *Lopez*, 117 S. Ct. at 344-345.

subject to the preclearance requirements when they effect changes in covered jurisdictions).

This case does not require the Court to address whether Section 5 preclearance is required when a State that is not separately covered as a State enacts a voting change into law *without* exercising or considering the policy choices of a covered political subdivision, and the covered subdivision is afforded no discretion in administering that law. If the Court reaches that question, however, it should conclude that such changes must be precleared in the covered subdivision.[10] In its previous cases concerning voting changes mandated by the legislatures of partially covered States, this Court has assumed that such changes are so covered if they affect voting practices in covered

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[10] Section 5 by its plain language requires preclearance in such a situation; the statutory language contains no indication that there is some category of "nondiscretionary" voting changes required by state law that a covered jurisdiction may enforce without preclearance. In *Young* v. *Fordice*, 117 S. Ct. at 1239, the Court suggested that, when a covered jurisdiction seeks to administer a federal law, Section 5 preclearance may not be necessary if the covered jurisdiction has no discretion as to how it may implement that federal law. That suggestion in *Young* is irrelevant to this case, for this case involves local implementation of a state law, not a State's implementation of a federal law. It may be doubtful whether Congress intended in the Voting Rights Act to require preclearance of its own enactments or of a State's nondiscretionary, ministerial implementation of them. The Court in *Young* did not reach that issue because it concluded that the National Voter Registration Act of 1993, 42 U.S.C. 1973gg *et seq.*, the statute at issue in *Young*, requires the States to exercise discretion in its implementation; the Court therefore did not need to decide whether Section 5 would require preclearance of a federal law that gave the covered jurisdiction no discretion in its implementation. But the rationale for questioning coverage of a ministerial implementation of federal law—namely, that Congress has already had the opportunity to determine that the new law is consistent with the Voting Rights Act—has no application to a law enacted by a State rather than by Congress.

political subdivisions. For example, in *United Jewish Organizations* v. *Carey*, 430 U.S. at 156-157, the Court explained that when New York, a State that is partially covered by Section 5, enacted statutes requiring redistricting of counties, those statutes were subject to Section 5's preclearance mandates insofar as they affected counties that had been determined to be covered political subdivisions. See also *Shaw* v. *Hunt*, 517 U.S. 899, 912-913 (1996) (involving redistricting statute enacted by North Carolina, a partially covered state); *Gingles* v. *Edmisten*, 590 F. Supp. 345, 350-351 (E.D.N.C. 1984) (similar), aff'd in part, rev'd in part, 478 U.S. 30 (1986). No persuasive reason has been presented in this case for adopting a different reading of the language of Section 5.

* * * * *

For the reasons discussed above, the district court's judgment is clearly in error. Monterey County administered the first of the unprecleared changes at issue more than 25 years ago. Congress enacted Section 5 to require preclearance *before* voting changes could be enforced to prevent the kind of delay in the adjudication of voting rights that has occurred here. See *Hampton County*, 470 U.S. at 175 n.19. In its earlier decision in this case, the Court admonished that "[t]he requirement of federal scrutiny should be satisfied without further delay." *Lopez*, 117 S. Ct. at 349. That requirement should be satisfied forthwith.

CONCLUSION

The judgment of the district court should be reversed and the case remanded for the entry of appropriate relief.

Respectfully submitted.

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JUNE 1998

APPENDIX

MONTEREY COUNTY
INTERGOVERNMENTAL AFFAIRS
[address illegible]

[Seal Omitted]

MICHAEL D. JOHNSON
DEPUTY COUNTY ADMINISTRATIVE OFFICER

August 4, 1983

Senator Henry Mello
State Capitol
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Sacramento, CA 95822

Dear Henry:

The Monterey County Board of Supervisors on August 2, 1983, approved the consolidation of our Justice Court and Municipal Court systems by annexing the Central and Southern Justice Court Districts to the Monterey County Municipal Court District. The merger is to become effective December 31, 1983. Additionally, the Board has approved the conversion of the existing two justice court judgeships into Municipal Court judgeships. Consequently, I have been directed to seek, with your support and sponsorship, as amendment to SB 676 which is our municipal court staffing bill.

During the past few weeks we have been working with Carol Ross, of your staff, and Rubin Lopez, consultant to the Assembly Judiciary Committee. We understand our

court merger is identical to one recently approved in Fresno County, which took similar legislative action.

I am attaching a copy of the Board Resolution approving the above referenced merger, as well as the Board's request for legislation to convert the two Justice Court Judges to Municipal Court Judgeships. Please feel free to call me if there are any questions or if I can provide you with more information. Thank you for your continued support and assistance to the County of Monterey.

Sincerely,

/s/ MICHAEL D. JOHNSON
MICHAEL D. JOHNSON
Assistant County
Administrative Officer

MDJ:MEM

cc: Members of the Board of Supervisors
Mr. Rubin Lopez, Consultant, –
Assembly Judiciary Committee

Enclosures

(9)

No. 97-1396

In the

Supreme Court of the United States

October Term, 1997

VICKY M. LOPEZ, et al.,
Appellants,

v.

MONTEREY COUNTY, CALIFORNIA,
STATE OF CALIFORNIA
Appellees,

and

WENDY DUFFY,
Intervenor-Appellee.

On Appeal from the United States District Court for the Northern District of California

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLEE, STATE OF CALIFORNIA

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28 pp

QUESTION PRESENTED

1. Whether the severe preclearance penalty of the Voting Rights Act, expressly imposed upon those states for political subdivisions identified by the Act's coverage formulae, may be extended to restrain a noncovered state which includes within its borders a covered political subdivision.

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, Pacific Legal Foundation (PLF) respectfully submits this brief amicus curiae in support of appellee, the State of California. All parties have consented to the filing of this brief. The letters of consent have been lodged with the Clerk of this Court.

Pacific Legal Foundation[1] is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of engaging in litigation in matters affecting the public interest. PLF has adopted policies promoting the integrity of the electoral process. To that end, Pacific Legal Foundation is submitting this brief to provide an additional viewpoint with respect to the issues presented. PLF attorneys filed a brief in the earlier incarnation of this lawsuit, *Lopez v. Monterey County, California*, 519 U.S. 9, 117 S. Ct. 340 (1996), and participated in numerous other cases in the voting rights context before this Court including *Bush v. Vera*, 517 U.S. 952, 116 S. Ct. 1941 (1996); *Shaw v. Hunt*, 577 U.S. 899, 116 S. Ct. 1894 (1996); *United States v. Hays*, 515 U.S. 900 (1995); *Miller v. Johnson*, 515 U.S. 900 (1995); *Chisom v. Roemer*, 501 U.S. 380 (1991); and *Houston Lawyers' Association v. Attorney General of Texas*, 501 U.S. 419 (1991).

PLF believes that the significance of this case reaches beyond its limited facts because it addresses a fundamental question of law that goes to the heart of how the Constitution allocates power between the federal government and the states. Amicus seeks to augment the arguments in the parties' briefs regarding the proper understanding of the federalist system

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[1] Pursuant to Supreme Court Rule 37.6, amicus curiae Pacific Legal Foundation affirms that no counsel for any party in this case authored this brief in whole or in part; and furthermore, that no person or entity has made a monetary contribution specifically for the preparation or submission of this brief.

established by the Constitution. PLF believes that the extraordinarily intrusive provisions of the Voting Rights Act must be construed narrowly to avoid unnecessarily treading on state sovereignty. In this case, the State of California has never been accused of engaging in discriminatory voting practices, covert or otherwise. Therefore, the federal government must not impose on California the intrusive penalties of the Act enacted to prevent further discrimination by those jurisdictions that *have* infringed upon citizens' right to vote. PLF believes that its public policy perspective and litigation experience dealing with federalism and the Constitution's enumeration of powers will provide this Court with a broader policy viewpoint than that presented by the parties and believes that its broader viewpoint will aid this Court in the resolution of this case.

OPINION BELOW

The December 19, 1997, opinion of the three-judge District Court in *Lopez v. Monterey County, California*, is not reported. The decision is included in the Jurisdictional Statement Appendix (JSA) at 1-12.

STATEMENT OF THE CASE

Prior to 1968, Monterey County, California (County), had two Municipal and seven Justice Court districts. *Lopez*, 117 S. Ct. at 343. Between 1968 and 1983, those districts were consolidated to provide for one Municipal Court district with judges elected at-large from the entire county. *Id.* at 344. The consolidation ordinances were subject to review under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and, in 1991, Latino residents (led by Vicky Lopez) of the County filed a Section 5 enforcement action seeking declaratory and injunctive relief

requiring the County to seek preclearance of the ordinances before enforcing them further. *Lopez*, 117 S. Ct. at 345.

On March 31, 1993, the United States District Court for the Northern District of California (three-judge panel) found that the ordinances did require preclearance and that the ordinances could not be enforced without preclearance. *Id.* at 345. In response to the court's order, the County sought after-the-fact preclearance in the United States District Court for the District of Columbia. *Id.* The County then stipulated that the consolidations ordinance did deny the right to vote to Latinos due to the retrogressive effect several of these ordinances had on Latino voting strength in Monterey County. *Id.*

Monterey County and Lopez came up with two plans for the election of Municipal Court judges, both of which required subdividing the County into judicial election districts. *Id.* However, these plans conflicted with Article VI, Section 16(b),[2] of the California Constitution by removing the linkage between a judge's electoral and jurisdictional bases. *Id.* Nonetheless, the parties asked the court to authorize the County to adopt the plan and, upon such authorization, the County said it would seek preclearance. *Id.* The State of California intervened and objected to the issuance of an order authorizing the plan. *Id.* at 346. The District Court did not approve the plan because it was not satisfied that a plan necessarily had to conflict with the California Constitution to comply with the Voting Rights Act. *Id.*

In a hearing to show cause why it kept submitting plans that create election districts that violate Article VI, Section 16(b), of the California Constitution, the County explained it could not submit a plan for preclearance that does not conflict with at least one state law and still comply with the Voting Rights Act. *Id.*

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[2] In pertinent part, Article VI, Section 16(b), of the California Constitution states: "Judges of other [nonappellate] courts shall be elected in their counties or districts at general elections."

at 345-46. Thereafter, the court enjoined Monterey County from holding elections for Municipal Court judges pending adoption and preclearance of a plan for their election. *Id.* at 346. The court ordered the County to take the necessary steps to obtain changes in existing state law and county ordinances to effectuate such a plan. *Id.* Lopez and the County then asked the court to allow elections to take place under one of the subdistricting plans or to authorize the County to implement a plan which would include districts that split cities. *Id.* at 346. A plan splitting cities would violate Article VI, Section 5(a), of the California Constitution.

The court implemented the four-district plan as an emergency, interim plan, with the restriction that the terms served by the judges elected pursuant to that plan shall expire on January 1, 1997. *Id.* at 346. The special election occurred on June 6, 1995. *Id.* Subsequently, this Court decided *Miller v. Johnson*, 515 U.S. 900, which the District Court correctly found cast serious doubt on the validity of the District Court's interim plan. *Id.* *Miller*, a racial gerrymandering case relating to Georgia's congressional districts, raised substantial doubt that legislative division of election districts based predominantly on race can withstand constitutional scrutiny. *Id.* at 911-12. Given this intervening clarification of the law, the District Court issued a new order on November 1, 1995. *Lopez*, 117 S. Ct. at 346. The new order rescinded the interim plan and held that judges will be elected in 1996 by the countywide at-large system in place before the litigation commenced. *Id.* The State of California joined the litigation as an indispensable party on the basis of its argument that the County was only administering a *state* statute and, therefore, the failure to preclear the consolidation ordinances is of no significance. *Id.* Lopez appealed the decision rescinding the emergency interim plan to this Court.

This Court issued its decision on November 6, 1996, holding that the County was required to preclear the ordinances

at the time those ordinances were enacted. *Id.* at 348. However, the Court did not finally dispose of the case. This Court expressly left several issues for the District Court to consider on remand: (1) whether intervening changes in California law converted the county's judicial election scheme into a state plan that does not need preclearance; (2) whether the complaint, originally filed in 1991 challenging consolidation ordinances enacted from 1968-83, was barred by laches; (3) whether it was constitutionally improper to designate Monterey County a covered jurisdiction under Section 5; and (4) whether the consolidation ordinances altered a voting "standard, practice, or procedure" subject to Section 5 preclearance.[3] *Id.* at 347. Consequently, the state moved to dismiss the Plaintiffs' complaint on the grounds identified by this Court as appropriate for remand and to vacate the District Court's order extending the terms of incumbent judges. The subject of the current appeal is the District Court's ruling regarding the state's first contention.

California does not discriminate against minorities in its conduct of elections. According to federal formulas contained in the Voting Rights Act, California never discriminated against minorities in its conduct of elections.[4] However, due to a combination of low voter turnout and high minority population present together in a single election, the federal government deemed 4 of California's 58 counties, including Monterey County, to have discriminated.[5] They therefore became covered

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[3] Neither the Attorney General nor the District Court for the District of Columbia has made any findings regarding the alleged retrogressive effect of the consolidation ordinances. *Lopez*, 117 S. Ct. at 347.

[4] Coverage is determined by Section 4(b) of the Voting Rights Act, 42 U.S.C. § 1973b(b).

[5] Monterey County became subject to coverage in 1970, by failing the mechanical application of the Section 5 coverage standards: (1) on

(continued...)

jurisdictions subject to federal oversight of electoral changes. The State of California, itself, however, continued to regulate its own elections and the qualifications of its officers as is its fundamental, sovereign duty.

The California Constitution contains several provisions relating to judicial elections: "Each county shall be divided into municipal court districts as provided by statute." Cal. Const. Art. VI, § 5(a). "The Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts." Cal. Const. Art. VI, § 5(c).[6] "Judges of other [nonappellate] courts shall be elected in their counties or districts at general elections." Cal. Const. Art. VI, § 16(b). State statutes flesh out the judicial

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[5] (...continued)
November 1, 1968, the California Constitution still included a statewide literacy test for voting (which had been discontinued by August, 1970) and (2) the Census Bureau determined that fewer than 50% of the voting age residents in the county had voted in the November, 1968, presidential election. *See* 42 U.S.C. § 1973b(b), 35 C.F.R. Part 51 (Appendix); 35 Fed. Reg. 12354 (July 24, 1980); 36 Fed. Reg. (No. 60) 5809 (March 27, 1971). In 1968, Monterey County had within its borders a large and active military base, Fort Ord Army Base, most of whose residents would not be expected to vote within Monterey County. *See Carrington v. Rash*, 380 U.S. 89, 91 n.3 (1965). Monterey County also housed the Naval Post-Graduate School. Moreover, Soledad State Prison was and is located in Monterey County. Under California law, the thousands of inmates could not vote. Cal. Const. Art. II, § 4. The combined populations of the military outposts and the prison accounted for almost one-sixth of the County's total population. Appellee State's Brief on the Merits in *Lopez v. Monterey County, California* (No. 95-1201), at 1-2. With a large proportion of this population not voting, the turnout for the 1968 elections fell below 50%, thus triggering the coverage provisions of the Voting Rights Act.

[6] Article VI, Section 5, of the California Constitution was adopted by initiative constitutional amendment in 1995.

election scheme. For Monterey County, the state Legislature enacted the following statute:

> There is [in] the Court of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District, and North Monterey County Judicial District. This article applies to the municipal court established within the judicial district which shall be known as the Monterey County Judicial Court.

Cal. Gov't Code § 73560 (as amended in 1979). As the District Court below summarized, "by the amendment to section 73560 in 1979, the State clearly dictated that Monterey County would have a single municipal court district." JSA at 7. Monterey County by then had only the single Municipal Court district and two Justice Court Districts. In 1983, the state amended Government Code § 73562 to increase the number of Monterey Municipal Court judges from seven to nine, contingent upon the consolidation of the single Municipal Court district with the Justice Court districts. *Id.* The State submitted the 1983 amendment to the United States Attorney General for preclearance, which was granted. *Id.* Another amendment to this Government Code § 73560 in 1989 acknowledged the consolidation had occurred, noting that "the Monterey County Municipal Court District . . . encompasses the entire County of Monterey. JSA at 8. Finally, due to a 1995 constitutional provision requiring Municipal Court districts to have a minimum population of 40,000, the two Justice Courts would necessarily have become part of the Monterey County Municipal Court District. *Id.* (citing Cal. Const. Art. VI, § 5(a)).

Relying on *Young v. Fordice*, 117 S. Ct. 1228 (1997), the District Court held that a covered jurisdiction under Section 5 of the Voting Rights Act need not seek preclearance unless it exercises some policy choice and discretion. Because Monterey County lacks the discretion to choose a voting plan that does not

involve a countywide judicial election district, the Plaintiffs did not state a claim for relief and their complaint was dismissed. *Id.* at 8-9. The District Court issued its judgment on December 19, 1997. The Plaintiffs filed their notice of appeal on December 24, 1997. The State of California filed a motion to affirm the judgment on March 27, 1998. This Court noted probable jurisdiction on March 6, 1998.

SUMMARY OF ARGUMENT

California, a sovereign state, must determine the qualifications of its own officers and the structure of its own government. California may, in furtherance of its decisions regarding the best qualifications and structure, impose state restrictions on subordinate political entities. The federal government has never found that California's state election laws discriminate against minorities, even when those laws are directed toward particular counties. No county, a mere political subdivision of the state, may declare itself exempt from these nondiscriminatory provisions.

Given the fundamental principles of federalism, micromanagement by the federal government in the absence of discriminatory conduct by the state infringes on the state sovereignty as protected by the Tenth Amendment to the United States Constitution. Because the court below determined that a state statute and precleared county ordinance are the sole legal authority governing Monterey County's judicial elections, it correctly held that Section 5 of the Voting Rights Act does not apply in this case. The judgment below should be affirmed.

ARGUMENT

I
EXPANDING THE BREADTH OF SECTION 5 PRECLEARANCE PROCEEDINGS TO COVER AN "UNCOVERED" STATE VIOLATES THE TENTH AMENDMENT

Traditional state powers, as protected by the Tenth Amendment to the United States Constitution,[7] are threatened when the federal government declares that a state judicial election practice violates the Voting Rights Act. Established notions of federalism grant states the authority "to determine the qualifications of their most important government officials." *Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991). Under the United States Constitution, the states reserve the power to regulate elections and decide how state officials are chosen. *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973). The Tenth Amendment memorializes the dual sovereign structure embedded within the structure of the Constitution.

> Federalism was our Nation's own discovery. The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, *each protected from incursion by the other*. The resulting Constitution created a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own

[7] The Tenth Amendment to the United States Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

> set of mutual rights and obligations to the people who sustain it and are governed by it.

U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring) (emphasis added). An assertion that Congress has violated the Tenth Amendment is more aptly characterized as an assertion that Congress has attempted to regulate the states in a way that is contrary to the federalism structure. "The Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States." *New York v. United States*, 505 U.S. 144, 157 (1992).

The constitutional requirement to conform to the federalism structure provides substantive protections to individual liberty. *See generally, Gregory*, 501 U.S. at 458-59. Courts should not compel states to adopt remedial measures that contravene state laws codifying important state interests. *Id.* at 457, 472-73; *Taylor v. Beckham*, 178 U.S. 548, 570-71 (1900); *Boyd v. Nebraska, ex rel. Thayer*, 143 U.S. 135, 161 (1892); *Magnolia Bar Association v. Lee*, 793 F. Supp. 1386, 1417 (S.D. Miss. 1992). The theoretical basis for the assertion that state interests may overcome federal remedial measures originates in a long line of Supreme Court cases recognizing the right of a state to assert its sovereignty by defining who will, and who will not, exercise governmental authority. *Gregory*, 501 U.S. at 457, 472-73 (Under Article V of the United States Constitution, the people of Missouri have the perogative to determine whether judges must retire by a certain age); *Taylor*, 178 U.S. at 570-71 ("It is obviously essential to the independence of the states, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers . . . should be exclusive and free from external interference, except so far as plainly provided by the Constitution of the United States."); *Boyd*, 143 U.S. at 161 ("Each state has the power to prescribe the qualifications of its officers, and the manner in which they shall be chosen."). Wholesale changes or

intrusive alterations of the nature and operation of a state's judicial branch violate the principles of federalism ensconced in the Tenth Amendment to the United States Constitution. This Court has, in just the past few years, more fully explored the scope of this constitutional provision.

In *Gregory v. Ashcroft*, 501 U.S. 452, this Court read the Age Discrimination in Employment Act narrowly to avoid a construction that would have overturned Missouri's mandatory retirement age for state judges. "Through the structure of its government," the Court commented, "and the character of those who exercise government authority, a State defines itself as a sovereign." *Id.* at 460. Thus, Missouri's decision to retire judges at age 70 was the "prerogative" of "citizens of a sovereign State." *Id.* at 473. The federal government cannot tell the states to retain judges over the age of 70, because that command would destroy the ability of state citizens to "choose their own officers for governmental administration." *Duncan v. McCall*, 139 U.S. 449, 461 (1891). The federalist structure preserves freedom by separating the federal government from state governments. The ability to retain that freedom is completely obliterated, however, if the federal government can simply displace a state's own management of state affairs with federal laws.

> This federalist structure of joint sovereigns preserves to the people numerous advantages. It assures a decentralized government that will be more sensitive to the diverse needs of a heterogenous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry.

Gregory, 501 U.S. at 458.

In *New York v. United States*, 505 U.S. 144, this Court struck down a provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2021b, because the provision commanded states either to enact laws regulating the disposal of low-level radioactive waste or to take title to all low-level radioactive waste generated within their borders. The Court distinguished firmly between congressional power "to pass laws requiring or prohibiting certain acts" by private parties and congressional attempts "to compel the States to require or prohibit those acts." *Id.* at 166. The former is consistent with the Supremacy Clause, while the latter destroys the accountability of state officials to their electorate. *Id.* at 178-79. Congress, therefore, could not "simply . . . direct the States to provide for the disposal of the radioactive waste generated within their borders." *Id.* at 188.

This Court expanded *New York* in *Printz v. United States*, 117 S. Ct. 2365, 2368 (1997), a Tenth Amendment challenge to the Brady Act, an amendment to the Handgun Control Act of 1968, regulating the sale of firearms. In that case, the plaintiff sheriffs argued that, as state employees, with their primary obligation and oath to fulfill their state law responsibilities, Congress could not force them to carry out the federal requirements of conducting background checks on gun purchasers. *Id.* at 2369-70. This Court held:

> We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.

Id. at 2384. The Court was not persuaded by the government's arguments that directing the conduct of state officers was less offensive to federalism than directing the conduct of state legislatures, stating: "To say that the Federal Government cannot control the State, but can control all of its officers, is to say nothing of significance." *Id.* at 2382.

Despite the restrictions placed on the federal government regarding its ability to mandate states to run their own governments in any particular way, this Court has authorized some incursions into state sovereignty by upholding the constitutionality of Section 5 of the Voting Rights Act. As stated in its preamble, the Act was intended "[t]o enforce the fifteenth amendment to the Constitution of the United States." *See Allen v. State Board of Elections*, 393 U.S. 544, 588 (1969) (Harlan, J., concurring in part and dissenting in part). Pursuant to this constitutional power, the statute was aimed at discriminatory voting procedures which continued to deprive blacks of access to the ballot, such as literacy tests and grandfather clauses. *Shaw v. Reno*, 509 U.S. 630, 639 (1993). *See also Young v. Fordice*, 117 S. Ct. at 1232 (noting application of Section 5 to states with "a specified history of voting discrimination"). Then Attorney General Katzenbach repeatedly emphasized that the sole ambition of the Act was getting people registered. *United States v. Board of Commissioners of Sheffield*, 435 U.S. 110, 145 (1978) (Powell, J., concurring in part and concurring in the judgment). Although the Act constituted an "uncommon exercise of congressional power," *South Carolina v. Katzenbach*, 383 U.S. 301, 334 (1966), and a "substantial departure . . . from ordinary concepts of our federal system," *Hearings on S. 407, et al., Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 94th Cong., 1st Sess. 536 (1975) (testimony of J. Stanley Pottinger), its *limited* scope made it proper legislation pursuant to the Fifteenth Amendment. *See, e.g., City of Mobile v. Bolden*, 446 U.S. 55, 60-61 (1980); *Katzenbach*, 383 U.S. 301.

Members of this Court have long recognized that Section 5, even with its plain language construction (in contrast with the plaintiffs and Justice Department's broad interpretation), mandates severe intrusion by the federal government into state electoral autonomy. Justice Black wrote:

> I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in far away places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces.

South Carolina v. Katzenbach, 383 U.S. at 359-60 (Black, J., concurring in part and dissenting in part). Even though the majority opinion in *Katzenbach*, 383 U.S. at 335, upheld Section 5 as necessary and constitutional, the limitations on Section 5's intrusiveness were recognized in *Miller v. Johnson*, 515 U.S. at 927: "As we recalled in *Katzenbach* itself, Congress' exercise of its Fifteenth Amendment authority even when otherwise proper still must be consistent 'with the letter and spirit of the constitution.'" *Katzenbach*, 383 U.S. at 326, *cited in Miller*, 515 U.S. at 927. This Court has therefore forbidden an expansive reading of Section 5 precisely because of its obvious and immediate impact on state sovereignty.

A state's sovereignty, consistent with the Tenth Amendment, must be recognized in determining the extent to which federal courts and the Justice Department will be permitted to restructure state election laws enacted without discrimination. Federalism concerns consistent with the Tenth Amendment have been formalized by the rule that a statute will not be construed to undercut state authority unless there is a showing of the "unambiguous intent" of Congress to effect the purpose. *New York v. United States*, 505 U.S. at 171. "In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of a clear statement assures that

the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Gregory*, 501 U.S. at 461 (citing *United States v. Bass*, 404 U.S. 336, 349 (1971)). As construed in *Beer v. United States*, 425 U.S. 130 (1976) (announcing retrogression principle), Section 5 is indisputably a serious intrusion into the normal federal-state balance of authority. *See, e.g., United States v. Board of Commissioners*, 435 U.S. at 141 (Stevens, J., dissenting). To ignore the State of California's affirmative policy choices imposed on its counties through constitutional provisions and statutory law elevates the federal government's desire to oversee county elections over California's sovereign interest in promoting uniformity in the judicial elections of all 58 counties.

In *Chisom v. Roemer*, Justice Scalia wrote in dissent that "Section 2 of the Voting Rights Act of 1965 is not some all-purpose weapon for well-intentioned judges to wield as they please in the battle against discrimination." *Chisom*, 501 U.S. at 404 (Scalia, J., dissenting).[8] The same sentiment is even more true for Section 5.[9] The burden on California urged by the Plaintiffs in this case would severly strain the bounds of federalism by potentially requireing a soverign state with no history of discrimination to amend its own state constitution to accommodate the federal government's view of the perferred method of conducting county judicial elections. The circumstances of this case simply cannot justify such an intrusive burden. The decision of the District Court should be affirmed.

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[8] Section 2 is codified at 42 U.S.C. § 1973(a).

[9] This Court has twice found "insupportable" the Department of Justice's heavy-handed application of Section 5 to require states to maximize the number of minority districts. *Shaw v. Hunt*, 116 S. Ct. at 1904 (citing *Miller*, 515 U.S. at 924).

II

THE STATE OF CALIFORNIA HAS SUBSTANTIAL INTERESTS IN DETERMINING THE STRUCTURE OF INFERIOR COURTS

Because states have a substantial interest in the election laws that apply to state officers, federal courts should not compel the states to adopt remedial measures that contravene the policy choices reflected in those state laws. *See, e.g., Magnolia Bar Association*, 793 F. Supp. at 1417; *Taylor v. Beckham*, 178 U.S. at 570-71; *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. at 161.[10] In *Nipper v. Smith*, 39 F.3d 1494 (11th Cir. 1994) (*en banc*), *cert. denied*, 115 S. Ct. 1795 (1995), the Eleventh Circuit noted that implicit in this Court's plurality opinion in *Holder v. Hall*, 512 U.S. 874 (1994), was the idea that the Voting Rights Act could not constitutionally authorize federal courts to order the

[10] This issue was raised, but not resolved in at least one other similar instance. The settlement of *White v. Alabama*, 867 F. Supp. 1519 (M.D. Ala. 1994), *vacated*, 74 F.3d 1058 (11th Cir. 1996), which was approved by a federal District Court judge, expressly contradicted the Alabama Constitution by requiring an appointment process where the constitution mandates the election of judges. Specifically, Alabama's constitution provides for the election of all judges (Ala. Const. Amend 328, § 6.13) and grants the exclusive power to fill vacancies to the governor. Ala. Const. Amend. 328, § 6.14. State law requires that all qualified candidates be allowed to appear on the general election ballot. Ala. Code § 17-7-1 (1995). The legislature is vested with the power to decide the number of judges and whether to fund additional seats. *White*, 867 F. Supp. at 1545. Thus, because the settlement provided its own appointment process, it expressly violated state law. *White*, 74 F.3d at 1075 n. 54. The Eleventh Circuit did not reach this issue because it vacated the District Court's adoption of the settlement on other grounds. Taylor, *The Settlement of White v. Alabama: Judicial Intervention Into Alabama's At-Large Judicial Election Scheme*, 47 Ala. L. Rev. 901, 914 (1996).

composition of state governments. *Nipper*, 39 F.3d at 1532. The court of appeals quoted *Gregory v. Ashcroft*, which recognized that "the State's power to define the qualifications of their officeholders has force even as against the proscriptions of the Fourteenth Amendment" and that "the Fourteenth Amendment does not override all principles of federalism." *Gregory*, 501 U.S. at 469. States that choose their judges by popular election have decided that the "actual or possible threats to the impartiality and integrity of the judicial profession are outweighed by the popular accountability of the judiciary." P. Dubois, *From Ballot to Bench: Judicial Elections and the Quest for Accountability* 29 (1980), *cited in* Izatt, *The Voting Rights Act and the Judicial Elections: Accommodating the Interests of States Without Compromising the Goals of the Act*, 1996 U. Ill. L. Rev. 229, 243 (1996).

In *League of United Latin American Citizens, Council No. 4434 v. Clements (LULAC)*, 999 F.2d 831, 868-69 (5th Cir. 1993), the Fifth Circuit held that linking jurisdictional and electoral bases of trial courts

> advances the state's substantial interest in judicial effectiveness. Trial judges are elected by a broad range of local citizens, rather than by a narrow constituency. This electoral scheme balances accountability and judicial independence.
>
> By making coterminous the electoral and jurisdictional bases of trial courts, Texas advances the effectiveness of its courts by balancing the virtues of accountability with the need for independence. The state attempts to maintain the fact and appearance of judicial fairness that are central to the judicial task, in part, by insuring that judges remain accountable to the range of people within their jurisdiction. A broad base diminishes the semblance of bias and favoritism towards the parochial interests of a narrow constituency.

> Appearances are critical because "the very perception of impropriety and unfairness undermines the moral authority of the courts." The fear of mixing ward politics and state trial courts of general jurisdiction is widely held. It is not surprising then that states that elect trial judges overwhelmingly share this structure and electoral scheme. The systemic incentives of subdistricting are those of ward politics, and would "diminish the appearance if not fact of its judicial independence—a core element of a judicial office."

The Fifth Circuit in *LULAC* also held that this Court's decision in *Gregory* requires that the State's interest, as described above, be granted substantial weight because "the authority of the people of the States to determine the qualifications of their most important government officials . . . lies at the heart of representative government." *Id.* at 872.[11] Thus, the Fifth Circuit reasoned:

> If that interest is compelling, the people of Texas have *at least* a substantial interest in defining the structure and qualifications of their judiciary. Indeed, Texas' Attorney General has submitted to this court that linkage is a "fundamental right" that "serves [a] compelling interest" of the State of Texas. Linking electoral and jurisdictional bases is a key component of the effort to define the office of district judge. That Texas' interest in the linkage of electoral and jurisdictional bases is substantial cannot then be gainsaid.

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[11] *See Bates v. Jones*, 131 F.3d 843, 859 (9th Cir. 1997), *cert. denied*, 118 S. Ct. 1302 (1998) (Rymer, J., concurring) (identifying a state's interest in the structure of its government as one of the "strongest possible interests that the citizens of California could have, because it lies at the core of the state's constitutional authority").

LULAC, 999 F.2d at 872. Courts recognized the legitimacy and substance of linking electoral bases and courts' jurisdiction in Florida and Alabama. *See Nipper v. Chiles*, 795 F. Supp. at 1548; *Southern Christian Leadership Conference of Alabama v. Evans*, 785 F. Supp. 1469, 1478 (M.D. Ala. 1992). The legislative bodies of the 25 states that employ districtwide elections to elect their principal trial court judges have obviously come to the same conclusion. *See LULAC*, 999 F.2d at 872 and n.33. Thus, the overwhelming preservation of linkage in states that elect their trial court judges demonstrates that districtwide elections are integral to the judicial office and not simply another electoral alternative.

> The decision to make jurisdiction and electoral bases coterminous is more than a decision about how to elect state judges. It is a decision of what *constitutes* a state court judge. Such a decision is as much a decision about the structure of the judicial office as the office's explicit qualifications such as bar membership or the age of judges. The collective voice of generations by their unswerving adherence to the principle of linkage through times of extraordinary growth and change speaks to us with power. Tradition, of course, does not make right of wrong, but we must be cautious when asked to embrace a new revelation that right has so long been wrong. There is no evidence that linkage was created and consistently maintained to stifle minority votes. Tradition speaks to us about its defining role—imparting its deep running sense that this is what judging is about.

LULAC, 999 F.2d at 872 (emphasis in original).

Like Texas, Florida, and Alabama (among others) California has a substantial sovereign interest in having trial judges remain accountable to all voters in their district. Regardless of the race or residency of particular litigants, judges

make choices that affect all county residents and California's choice that they must therefore answer to all county voters at the ballot box is entitled to tremendous deference by the federal court.

CONCLUSION

As a sovereign state, California's constitution and statutes reflect policy choices as to the qualifications of state judges and structure of the state judiciary. These policy choices represent substantial interests that Congress may override with only the most explicit intent for only the most compelling reasons. Neither is present in this case. Federalism requires that the nondiscriminatory state laws at issue in this case remain free from federal oversight.

For the reasons expressed above, the decision of the District Court for the Northern District of California should be affirmed.

DATED: July, 1998.

Respectfully submitted,

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July 16, 1998

(17)

No. 97-1396

In the

Supreme Court of the United States

October Term, 1998

VICKY M. LOPEZ, et al.,
Appellants,

v.

MONTEREY COUNTY, CALIFORNIA,
STATE OF CALIFORNIA
Appellees,

and

WENDY DUFFY,
Intervenor-Appellee.

On Appeal from the United States District Court for the Northern District of California

NOTICE FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLEE, STATE OF CALIFORNIA

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3 pp

Pursuant to Supreme Court Rule 37, Pacific Legal Foundation (PLF) respectfully moves this Court for leave to file a brief amicus curiae in support of appellee, the State of California. The brief itself was filed with this Court on July 16, 1998, and erroneously indicated that all parties had granted consent. In fact, consent to the filing of this brief has been granted by counsel for appellants Lopez, *et al.*, for the State of California, and for intervenor Wendy Duffy. Those letters of consent have been lodged with the Clerk of this Court. Counsel for appellant County of Monterey has failed to respond to repeated requests for consent, thus necessitating the filing of this motion.

IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of engaging in litigation in matters affecting the public interest. PLF has adopted policies promoting the integrity of the electoral process. To that end, Pacific Legal Foundation is submitting this brief to provide an additional viewpoint with respect to the issues presented. PLF attorneys filed a brief in the earlier incarnation of this lawsuit, *Lopez v. Monterey County, California*, 519 U.S. 9, 117 S. Ct. 340 (1996), and participated in numerous other cases in the voting rights context before this Court including *Bush v. Vera*, 517 U.S. 952, 116 S. Ct. 1941 (1996); *Shaw v. Hunt*, 577 U.S. 899, 116 S. Ct. 1894 (1996); *United States v. Hays*, 515 U.S. 900 (1995); *Miller v. Johnson*, 515 U.S. 900 (1995); *Chisom* v. *Roemer*, 501 U.S. 380 (1991); and *Houston Lawyers' Association v. Attorney General of Texas*, 501 U.S. 419 (1991).

PLF believes that the significance of this case reaches beyond its limited facts because it addresses a fundamental question of law that goes to the heart of how the Constitution allocates power between the federal government

and the states. Amicus seeks to augment the arguments in the parties' briefs regarding the proper understanding of the federalist system established by the Constitution. PLF believes that the extraordinarily intrusive provisions of the Voting Rights Act must be construed narrowly to avoid unnecessarily treading on state sovereignty. In this case, the State of California has never been accused of engaging in discriminatory voting practices, covert or otherwise. Therefore, the federal government must not impose on California the intrusive penalties of the Act enacted to prevent further discrimination by those jurisdictions that *have* infringed upon citizens' right to vote. PLF believes that its public policy perspective and litigation experience dealing with federalism and the Constitution's enumeration of powers will provide this Court with a broader policy viewpoint than that presented by the parties and believes that its broader viewpoint will aid this Court in the resolution of this case.

For the foregoing reasons, Pacific Legal Foundation requests that its motion to file the amicus curiae brief which follows be granted.

DATED: July, 1998.

Respectfully submitted,

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